

# CLEAR LAW ENFORCEMENT FOR CRIMINAL ALIEN REMOVAL ACT OF 2003 (CLEAR ACT)

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## HEARING BEFORE THE SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

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## **CLEAR LAW ENFORCEMENT FOR CRIMINAL ALIEN REMOVAL ACT OF 2003 (CLEAR ACT)**

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**WEDNESDAY, OCTOBER 1, 2003**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON IMMIGRATION,  
BORDER SECURITY, AND CLAIMS,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 4:30 p.m., in Room 2237, Rayburn House Office Building, Hon. John N. Hostettler [Chairman of the Subcommittee] presiding.

Mr. HOSTETTLER. The Subcommittee will come to order.

Today, the Subcommittee is holding a hearing to examine H.R. 2671, the Clear Law Enforcement for Criminal Alien Removal Act of 2003, or the CLEAR Act. The CLEAR Act clarifies the authority of State and local officers to assist the Federal Government in enforcing the immigration laws. It provides a means for Federal, State, and local law enforcement officers to work together to apprehend, detain, and remove illegal aliens.

This is timely legislation. Our Nation faces an illegal immigration crisis of epic proportions. The former INS estimated that there were 5 million illegal aliens in 1996 in the United States. That number ballooned to 8 million in the past 2 years, and some estimate the illegal population in the United States to be upwards of 10 million today.

For the last few years, some 500,000 illegal aliens have been entering the United States annually, despite the fact that we have strengthened control at our borders. Why would aliens take the risk of crossing in rugged and treacherous terrain or place their lives in the hands of ruthless smugglers? Because they believe that once in this country, they can live and work here without fear of detection.

In the late 1990's and the early part of this decade, illegal aliens and unscrupulous employers took advantage of the disorganized INS, an agency that had more missions, it seems, than will or means to carry out. Since the September 11th attacks, those aliens have exploited the fact that immigration enforcement resources have been diverted to the fight against terror. This bill would aggressively—excuse me, would expressly give State and local police the resources and authority to assist in immigration enforcement. Many police officers have sought such authority to assist the Federal Government in the vital task of enforcing this Nation's immigration laws.

There are those who oppose the bill, however. Some opponents argue that local law enforcement officers should not have to enforce the Federal immigration laws. I would note that participation in enforcement under the bill is voluntary. Other opponents argue that local police have no place assisting enforcement of the Federal immigration laws. I would note that local police help other Federal agencies, such as the DEA and FBI. I would also respond that having law enforcement entities work together, as occurs daily on Joint Terrorism Task Forces, is the best way to ensure the safety of the American people.

Still others have argued that having local police officers assist ICE, Immigration and Customs Enforcement, in enforcing the immigration laws would damage relations between local police and immigrant communities.

As I understand these arguments, aliens in those communities are in a vulnerable position where they are preyed upon by thugs and other criminals, opportunists, and abusive spouses. Critics are concerned that such aliens will be unwilling to go to police who assist immigration officers.

In response, I first note that it makes no sense to argue that in a free and democratic society the weak are better protected by concealment and deception than they are by the rule of law. The concept that aliens are more secure residing in a quasi-legal underworld in which their illegal status is hidden by police, otherwise sworn to uphold the law, is illogical at best. Such arguments also fail to take notice of two facts: first, police and prosecutors would retain the discretion, even under the CLEAR Act, not to take action with respect to the witnesses to or the victims of crime; second, immigrant victims of many crimes are eligible for relief, particularly under the U visa program. Battered spouses are eligible for additional relief, including cancellation of removal.

Arguments that local immigration enforcement would harm relations between police and communities are also unduly speculative because they assume that local sanctuary policies prompt alien communities to trust the authorities. What is not speculative, however, is that illegal aliens who are arrested by local police but are released without being turned over to ICE are free to commit additional crimes often against other immigrants.

Enrique Alvarez, for example, was an illegal alien at the time that he allegedly kidnapped and assaulted a 9-year-old victim in early 2003. He was also illegal 3 years earlier in 2000 when, it has been reported, the San Jose police arrested him on suspicion of auto theft. It does not appear, however, that San Jose ever notified INS about him following that arrest. The Committee is currently investigating Alvarez's status and his criminal record.

Similarly, in December 2002, a 42-year-old mother of two was abducted and assaulted in Queens, New York, as discussed in a February 2003 hearing on that matter. Five aliens were arrested in connection with that assault. Four of those aliens entered the United States illegally, and three of them had been previously arrested by the NYPD but not reported to the INS.

Where local authorities have notified immigration authorities about criminal aliens, however, additional crimes have been avoided. For example, press reports indicate that fingerprints that INS

took of Lee Boyd Malvo proved crucial in linking Malvo and John Muhammad to the capital area sniper attacks in the fall of 2002 and an unsolved murder in Alabama. INS reportedly took those fingerprints after it arrested Malvo on a tip from local authorities in Washington State that Malvo was an illegal alien.

Opponents of this legislation have also asserted that allowing local police to assist in enforcing the immigration laws would lead to racial profiling. These concerns fail to appreciate the experience that local police would bring to immigration enforcement. State and local officers are trained and instructed in how to build cases without violating constitutional protections. Critics fail to explain why enforcing the immigration laws would present different constitutional challenges from enforcing criminal law.

Further, some who oppose this legislation argue that immigration law is too complex to be entrusted to local police. Again, I believe that this agreement sells local law enforcement unfairly short. An officer who can unravel a complex criminal conspiracy should be able to determine whether an alien has overstayed a visitor's visa.

In addition, I note that the CLEAR Act provides tools for local police to use in determining whether an alien is illegally present in the United States. The act allows for training to be made available to those officers and that DHS provide them with a training manual.

The CLEAR Act also expands the amount of information available to local law enforcement through NCIC. This information is in addition to the information currently available to local police through ICE's Law Enforcement Support Center, or LESC. Further, most of the immigrant violations that local police would encounter would not take in-depth analysis. The majority of aliens removed from the United States are aliens who have entered without inspection or who have overstayed nonimmigrant visas. Both of these violations can be uncovered through simple questioning. The LESC can also provide assistance in making this determination.

In summary, I believe that this legislation is an appropriate response to the immigration crisis that is currently facing our Nation. Those who would argue that enforcement of the immigration laws should be left solely to ICE fail to appreciate the interconnected nature of local, State, and Federal law enforcement presently. It would appear that some critics of this bill would prefer to make ICE a pariah agency, isolated from State and local police officials who would hide rather than identify immigration violators. I doubt, however, that those critics would be willing to pay the costs, either fiscal or societal, of such policy.

I turn now to the Ranking Member, my colleague, Ms. Jackson Lee from Texas, for any opening statement she might like to make.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I want to note for the panelists and the Members that the Chairman and myself have enjoyed a collegiate relationship in working on these issues, although in many instances we disagree. But I certainly appreciate the fact that he has been open and willing to listen to some of my concerns, and I would look forward, as we are having the hearing on the CLEAR Act, that we can move quickly to have a hearing on the smuggling legislation that I have authored and

would hope that we'd have that opportunity to do that in the very near future.

Even with this collegiate attitude, let me say, as I open my remarks, that I believe that the CLEAR Act is both unworkable, burdensome, and is an unfunded mandate. And I truly believe that the security of this Nation is really founded on better intelligence. That is how we will secure the homeland. And many of the aspects of the CLEAR Act are already included in present law enforcement opportunities.

There's not a State in our Nation nor a city in our Nation that is not facing its own budget crisis. I cannot imagine the burden that the CLEAR Act will implement on local law enforcement without any sources and resources to supplement the already tight budgets of our law enforcement officers.

Since 9/11, the great tragedy that this country experienced, we have asked our first responders to be on the front line of many, many aspects of homeland security. As a member of the U.S. Homeland Security Committee of the House of Representatives, I can assure you that the burden is enormous, that police now are having to provide added equipment, that they are required now in certain areas, in certain large efforts in the community, festivals and other large gatherings, to add extra-manned and extra-womanned police officers, if you will, to protect our community.

In a few months, though we're excited about it, Houston, the fourth largest city in the Nation, will host the Super Bowl. I can assure you that our law enforcement will probably not be able to find one extra man-hour or woman-hour that they can spare as they look to host one of the Nation's proud sports activities.

As it relates to the point that the Chairman made with respect to Mr. Malvo, the sniper, which we all found to be a heinous and horrific act, let me suggest that he was a minor in removal proceedings, and he was released by a judge. The CLEAR Act would do nothing to have prevented Mr. Malvo from being released.

So, Mr. Chairman, I have serious reservations about the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act, H.R. 2671. State and local police already have authority to enforce criminal laws, regardless of the immigration status of the perpetrator of the crime. They also have the authority to notify Federal immigration agents about foreign nationals who have committed crimes. The CLEAR Act would go beyond the enforcement of criminal laws and put pressure on State and local police to investigate and enforce similar immigration—civil immigration laws.

Among other things, the CLEAR Act would require State and local governments to enact statutes that expressly authorize law enforcement officers to enforce immigration laws during the course of their duties. It would sanction governments that fail to enact such statutes by stopping their Federal reimbursement for incarcerating noncitizens. What a horrible penalty for innocent municipalities who are trying to do the very best with the meager resources and responsibilities they have.

The Federal CLEAR Act should not break the harmony that cities have created between their immigrant community who are law-abiding citizens. In addition, police do have the authority to stop individuals and determine whether they have violated civil laws,



such as having an expired driver's license. In that instance, if they come in contact with someone who, by checking their license plate or something else, is engaged or has engaged in a criminal act, they certainly have the authority to deal with that individual.

Under the CLEAR Act, State and local law enforcement would have 10 days to report background information on undocumented aliens they apprehend, and the State and local law enforcement agencies would have to explain any failure to do so.

Mr. Chairman, I have been a member of the Houston City Council and am delighted to have the Mayor Pro Tem here present with us today, Gordon Quan, who you will introduce, unless you share that opportunity with me. He's an outstanding member of our City Council. He has chaired and organized the city's Immigration Task Force or Council Committee, and he has led in a very able way.

We can assure you that that would be an enormous, untenable burden to say that our law enforcement had 10 days to report the background information when they're dealing on the various incidences and crime and other assaults and matters that they have to confront to protect and secure those citizens in the city of Houston and others. This would be just unrealistic.

This would apply to the following information on all immigration violators: the alien's name; the alien's address or place of residence; physical description of the alien; the date, time, and location of the encounter with the alien; reason for stopping, detaining, apprehending, or arresting the alien; if applicable, the alien's driver's license number and the State of issuance of such license. None of this goes to protecting us against terrorism; if applicable, this type or any other identification document issued to the alien, any designation number contained on that identification document, and the issuing entity for the identification document; if applicable, the license plate number, make and model of any automobile registered to or driven by the alien; a photo of the alien, if available or readily obtainable; the alien's fingerprints, if available or readily obtainable.

I do not want to state—want State and local police forces to enforce civil immigration law. The immigration law, Mr. Chairman, is extremely complicated. Federal judges have compared it to the Internal Revenue Code in complexity. Maybe we as a Committee will work to ensure that the immigration laws are effective but maybe that they're more simplified.

Local law enforcement officials do not have the training and expertise that is necessary to determine whether a person who appears to be from another country is an alien who is in the United States unlawfully. I think we do better to ensure more immigration-trained personnel that would assist in their work in local communities. Community-based policing is one of the most powerful law enforcement tools available. By developing strong ties with local communities, police departments are able to obtain valuable information that helps them fight crime.

In fact, the recent terrible incident with smuggling of illegal aliens in Texas was aided by the willingness of those individuals to share with police persons and Federal authorities who they thought would be helpful to them, and that relationship helped

solve some of the—to bring to justice some of those who perpetrated this heinous crime.

The development of community-based policing in immigrant communities is extremely important, and I believe that the CLEAR Act would put a damper, but it would set this whole communications relationship afire. In some cities, criminals have exploited the fear of immigrant communities and have utilized them and violated them and caused them not to go to law enforcement officials when they should.

For instance, in Durham, North Carolina, thieves told their victims in a community of migrant workers that if they called the police, they would be deported. And local police have found that fear of being deported prevents many immigrants from reporting crimes, even in the face of grave danger.

In 1998, Eleanor Gonzalez, an immigrant in New Jersey, was found murdered in the basement of her apartment. Friends of Ms. Gonzalez said that the suspected murderer, her former boyfriend, threatened to report her to the INS if she did not do what she was told.

So, finally, Mr. Chairman, might I say that this is an important hearing. I do not deny that. But, clearly, we must think reasonably about this. And as I read the long list of requirements of one lonely police officer with a multitude of responsibilities, a line officer on the front lines that has to go out every day and do his duty and then come back and just be burdened down with police work or paperwork that immigration authorities should be doing is outrageous. How are we going to pay for this? is the question. Why don't we work with the Department of Homeland Security and make sure that we have the kind of well-trained, well-funded, multiplicit individuals who can help us in the local areas, multi-talented, multi-faceted, but certainly the CLEAR Act is too much of a burden, a burden on those who work every day to protect us in our communities.

I yield back.

Mr. HOSTETTLER. I thank the gentlelady for her statement.

Do any other Members of the Subcommittee have an opening statement? The Chair recognizes the gentleman from Arizona, Mr. Flake, for 5 minutes.

Mr. FLAKE. Mr. Chairman, I just want to ask unanimous consent to insert into the record a letter from Americans for Tax Reform, signed by Mr. Grover Norquist, also signed by the Honorable Bob Barr, former Member of Congress, whom we all know here, and David Keene, the president of the American Conservative Union, in opposition to the bill.

Mr. HOSTETTLER. Without objection.

Mr. FLAKE. Thank you.

[The letter follows in the Appendix]

Mr. HOSTETTLER. Does the gentleman yield back his time?

Mr. FLAKE. Yes, I do.

Mr. HOSTETTLER. The Chair now recognizes the gentlelady from California, Ms. Sánchez, for 5 minutes.

Ms. SÁNCHEZ. Thank you, Chairman Hostettler and Ranking Member Jackson Lee, for convening this important legislative hearing today to hear testimony on H.R. 2671, the Clear Law Enforce-

ment for Criminal Alien Removal Act of 2003, commonly known as CLEAR.

I believe that the CLEAR Act is perhaps one of the most dangerous and potentially damaging bills that this Subcommittee has considered. The CLEAR Act is detrimental to our police departments, the safety of our immigrants and nonimmigrant communities, and to our national security.

The CLEAR Act burdens State law enforcement agencies and budgets because it puts a substantial burden on the State and local law enforcement agencies, State and local budgets, and taxpayers as well. The CLEAR Act will require State and local law enforcement agents to be police officers, first responders, and now immigration agents. America's State and local law enforcement agencies have their hands full fighting crimes and keeping our streets safe.

Since the terrorist attacks of September 11th, State and local law enforcement agents have been given added responsibilities of being first responders, our first line of defense against a terrorist attack. The CLEAR Act adds to these substantial burdens the responsibility of enforcing Federal civil immigration laws, not criminal immigration laws. This is not an easy task. To properly enforce Federal immigration laws, police officers will have to be knowledgeable about subjects like the H1-B visa program, asylum, and temporary protected status. It takes Federal immigration agents 17 weeks of training to learn the basics of these subjects, not to mention the time it takes to understand the thousands of nuances of Federal immigration law.

The CLEAR Act will also make it much more difficult for State and local law enforcement agents to protect the communities that they try to serve. Turning police officers into immigration agents will destroy trust, cause many immigrants, whether they are here legally or illegally, to avoid contact with law enforcement agents because of the fear factor, and deter immigrants from helping with criminal investigation. The fear of being imprisoned or deported will cause victims, witnesses, or concerned citizens of immigrant communities from contacting police officers within information about crimes. This fear may prove to be a slippery slope and result in immigrants' not informing fire departments and emergency rescue personnel of emergencies.

And I have two letters that I'd like to submit with unanimous consent into the record from the California Police Chiefs Association and the Federal Hispanic Law Enforcement Officers Association in opposition to this bill. They are folks on the front lines that see that establishing this type of fear in communities is going to actually hamper their ability to protect and serve.

Mr. HOSTETTLER. Without objection.

[The letter follows in the Appendix]

Ms. SÁNCHEZ. One of the most troubling aspects of the CLEAR Act is that it doesn't require any police training of immigration law whatsoever. While it gives the officers the added responsibility for enforcing Federal immigration laws, it doesn't do anything to ensure that officers will be adequately trained to enforce those laws.

Under Sectio 109(a) of the CLEAR Act, within 180 days of enactment the Attorney General or the Secretary of the Department of Homeland Security are required to develop a training manual to

teach State and local law enforcement personnel about how to enforce Federal civil immigration law. However, the training is not mandatory. Under section 109(d) of the CLEAR Act, the clarification provision, States and localities are not required to take any immigration training courses as a prerequisite to enforcing immigration laws.

Specifically, section 109(d) states, “Nothing in this act or any other provision of law shall be construed as making any immigration-related training a requirement for or prerequisite to any State or local law enforcement officer to enforce Federal immigration laws in the normal course of carrying out their law enforcement duties.”

As a further obstacle to training State and local police officers on immigration law, section 109(b)(1) of the CLEAR Act allows the Attorney General or the Secretary of DHS to charge States and localities a fee of up to 50 percent of the total cost to acquire the training manuals without actually requiring the training itself.

I have extended remarks which I would like to submit to the record, but I just want to make one final point, and that is that the CLEAR Act, which purports to further national security interests, will actually have the opposite effect if implemented because police officers will now be burdened with trying to enforce civil immigration laws such as overstayed student visas, as an example, or a student who may have temporarily overstayed before re-enrolling, or a student who may have dropped to part-time status but has an extension in the works and under consideration, instead of going after the criminal aliens, which all of us think law enforcement’s time is well spent doing.

So with that, I will yield the balance of my time and submit my full remarks for the record.

[The prepared statement of Ms. Sánchez follows in the Appendix]

Mr. HOSTETTLER. I thank the gentlelady.

The Chair now recognizes the gentleman from Iowa, Mr. King, for 5 minutes.

Mr. KING. Thank you, Mr. Chairman. I appreciate the opportunity to be recognized, and I would ask unanimous consent to introduce some remarks into the record, but also make some very brief comments with regard to that. As I listen to the opening statements here before this hearing, a few things come to mind.

One is, according to INS’ records, there were at least 98 American citizens who were murdered by those who had been adjudicated as illegal aliens and then released into society. That’s between 1994 and 1998, if I remember those numbers right—1999. And I think those numbers are significantly larger. We’re in the process of compiling data, not just from our Federal penitentiaries but also from the State penitentiaries. It’s very complicated. That number does look to be substantially larger.

As we are seated here today and we watch the news across the country, there is an effort across the Nation called—and I think inaccurately labeled a Freedom Ride, where there are buses traveling through our major cities in America advocating for fast-track citizenship for illegal aliens. And, you know, as I listen to the arguments that are made here, there are those also who support that

as a legitimate means to adapt the law to the person who has broken it rather than enforce the law as it's intended by Congress.

It's our responsibility to enforce the law or amend the law, and I believe Mr. Norwood has brought an important piece of legislation here before us. I am a cosponsor of this legislation. I enthusiastically support it. I was raised in a law enforcement family, and it is absolutely essential that we have cooperation at all levels of law enforcement in this country, from Federal down through our State, down to our local law enforcement officers. They have to know on what ground they stand, and any city that passes an ordinance that precludes their employees from enforcing Federal law in a sense is writing their own immigration law. That's the responsibility of Congress.

Thank you, Mr. Chairman. I yield back.

[The prepared statement of Mr. King follows in the Appendix]

Mr. HOSTETTLER. The gentleman yields back the balance of his time. The Chair now recognizes the gentlelady from California, Ms. Lofgren, for 5 minutes for an opening statement.

Ms. LOFGREN. Thank you, Mr. Chairman. I will not use the entire 5 minutes, but I will say that I believe that the so-called CLEAR Act would be a mistake for our country and would set back the cause of law enforcement significantly.

When the police chiefs of California send a letter to me and the delegation as strong as a letter they've sent arguing against a piece of legislation, I think it's important to sit up and take notice. And, in addition to the points they've made relative to the enforcement of the criminal law, I also believe that the issues in their minds relative to forcing local police to cover the costs to deal with non-criminal aliens is something that we need to address in this Congress.

As you know, California has the highest-gap funding levels and—but we still shoulder most of the costs in State government and in local government. And this will just aggravate that situation. So, in addition to the letter from the Police Chiefs Association, I will note that the California Democratic delegation met just last week with the sheriff of L.A. County, with the sheriff of Orange County, with the chief of police of the city of Los Angeles, and all three of them urged us not to do this. And these are not exactly, you know, liberal guys. I mean, they think it's a mistake, and I think we ought to listen to them.

In addition to the letter from the police chiefs, I would like to submit—ask unanimous consent to submit for the record a letter from the chief of police of the city of Newark, which is just outside my district in California, as well as a letter from the Boston police, all in opposition to the legislation, as well as a letter just received and signed by, I think, something like three or four pages from the California Legislature outlining their concern and disagreement with the act.

[The letters follow in the Appendix]

Ms. LOFGREN. I think that it's good to have hearings sometimes on controversial issues such as this, and we can listen to the experts. Certainly the police chiefs know a lot more about law enforcement than any one of us.

So I yield back the balance of my time.

Mr. HOSTETTLER. The Chair now recognizes the gentleman from California, Mr. Berman, for 5 minutes for an opening statement. Oh, sorry. The Chair now recognizes the gentlelady from Pennsylvania, Ms. Hart, for 5 minutes for an opening statement.

Ms. HART. Thank you, Mr. Chairman. I have a larger opening statement to submit for the record, but I simply want to state that I believe we're hearing some interesting concerns about the legislation, and maybe some of it's a misunderstanding about the legislation. And I'm pleased that we have the prime sponsor, Mr. Norwood, here as well as Mr. Deal. And I'm also an original cosponsor of the bill.

One of the major complaints that we heard about domestic security after September 11th was the lack of coordination between Federal agencies and between Federal and State officials. Unfortunately, these problems haven't been entirely solved, especially between Federal immigration officials and State and local law enforcement. That is the purpose of the CLEAR Act.

Now, the problem is very obvious to a lot of us who've actually experienced issues in our districts, those who, like Mr. King referred to, had terrible crimes committed where illegal immigrants were actually released from custody, only to commit those crimes—which, I will add, further complicated the job of local law enforcement and that could have been avoided completely if that law enforcement could have dealt with the issue right up front.

That's why I'm happy to join as an original sponsor of this bill. I look forward to the testimony. I don't want to belabor the opening statements any longer, but I ask for unanimous consent to submit my opening statement, the complete opening statement, for the record.

Mr. HOSTETTLER. Without objection.

[The prepared statement of Ms. Hart follows in the Appendix]

Ms. HART. I yield back.

Mr. HOSTETTLER. The Chair now recognizes the gentleman from California, Mr. Berman, for 5 minutes for an opening statement.

Mr. BERMAN. Well, thank you very much, Mr. Chairman, and I thank you for calling this hearing because I think it's important to create a structure for the discussion of this important issue.

I don't want to repeat, even though I very strongly agree with the arguments of my colleagues, Mr. Flake and Ms. Jackson Lee and Ms. Sánchez and Lofgren, on why I have real concerns about this legislation.

I would like to put into the record two letters. One is a letter from the police department of Lenexa, Kansas, indicating just what the passage of this legislation would do to the operations of that police department and that town in the State of Kansas.

Mr. HOSTETTLER. Without objection—

Mr. BERMAN. Not California, not Berkeley, not Boston. Kansas.

And also from a battered women's and children's nonprofit, pointing out that immediately upon the passage—also located in Kansas, upon passage of this kind of legislation, they know that immigrant women and children who've been subject to abusive treatment, the kind of people that this shelter and program seek to take care of, will no longer come or report to the local authorities these incidents and get the treatment, that this will work against the vic-

tims of crime and mistreatment because of what they feel will happen should something like the CLEAR Act become law. If I could put both of those in the record, I would appreciate it, Mr. Chairman.

Mr. HOSTETTLER. Without objection.

[The letters follow in the Appendix]

Mr. BERMAN. And then, just a general comment. The present situation—I agree with many of the speakers who disagree with me on this bill. The present situation is intolerable. We have millions of people in this country out of status, using false identifiers. Obviously the whole premise of the '86 bill on the issue of sanctions did not apply. We're trying to do a number of things to deter this from continuing to happen, spending a great deal of resources to make our borders more under our control, to implement entry-exit visa systems to try and deal with the potentials for overstays.

But it seems to me at a very fundamental level we have three choices: we let this intolerable situation continue, with all the exploitation and problems that exist from it; we attempt to address it, as many thoughtful people on both sides of the aisle have, our colleague Mr. Flake has put together a process for doing this. Many others in both the House and the Senate have. And try to come to grips with not only the problem of our borders, but the issue of need for legal workers in the future through the utilization of a safety valve of guest worker programs, and the situation of the millions of people who are in this country in an undocumented status whom we have no track of, we have no true identification of, and in the context of both humanitarian reasons and economic reasons and homeland security reasons, we need to address. Or we can create a massive Federal effort to go out and find and deport these 7 to 9 million people from this country. I don't believe the American people would stand for what would be required to do that, and well they shouldn't. But what the CLEAR Act does, to our way of thinking, is it tries to take the third approach but on the cheap, by imposing on local and State law enforcements, without adequate funding, the obligations to do what, if Congress really wanted to be done, they should take on themselves through appropriations and a massive expansion of a domestic force to find these people, and with all of the consequences that that would mean, and instead seek to just transfer the duties without the training, without the funding, and at great costs to the missions of our local police agencies around the country.

So, on balance, I think that this proposal is a mistake. If we're going to take that approach, let's do it straightforwardly and honestly. Let's debate that, not seek to transfer the burdens to somebody from a Government that is supposed to be responsible for the passage, the implementation, and the enforcement of its immigration laws.

Thank you, Mr. Chairman.

Mr. HOSTETTLER. The gentleman yields back the balance of his time.

Under unanimous consent, the Chair, along with the Subcommittee, welcomes the gentlemen from Georgia, our colleagues Mr. Deal and Mr. Norwood. I'd like to point out that Mr. Norwood is the sponsor of the CLEAR Act, the subject of today's hearing,

and the gentlemen will be open later in the hearing to ask questions of our witnesses and engage in this discussion.

I'd like to now turn to our witnesses—they're here—who have been very patient. We appreciate that.

John Morganelli was elected district attorney of Northampton County, Pennsylvania, in 1991, a position to which he was re-elected, unopposed, in 1995, 1999, and 2003. He was also a Democratic candidate for Pennsylvania Attorney General in 2002.

In 2002, Mr. Morganelli was named president of the Pennsylvania District Attorneys Institute. In addition, he served as president of Pennsylvania District Attorneys Association from 1999 to 2000 and has been a member of the Executive Board since 1995.

In 1996 to 1997, he was appointed special deputy attorney general by Attorney General Tom Corbett, investigating matters in Lackawanna and Luzerne counties. He has served as assistant public defender in Northampton County and as an independent special counsel investigating alleged police misconduct in Moore Township, Pennsylvania.

Mr. Morganelli earned his juris doctor in May 1980 from Villanova School of Law, and he was a summa cum laude graduate of Moravian College, Bethlehem, Pennsylvania, with a Bachelor of Arts in political science. Welcome, Mr. Morganelli.

Mr. MORGANELLI. Good afternoon.

Mr. HOSTETTLER. Professor Kris Kobach is a professor of law and Daniel L. Brenner Scholar at University of Missouri at Kansas City Law—School of Law, where he teaches and researches in constitutional law, American legal history, legislation and legislative drafting. From 1995 to 1996, Mr. Kobach was a judicial clerk to Judge Deanell Tacha of the Tenth Circuit U.S. Court of Appeals. Following that clerkship, he was an associate professor at UMKC Law School from 1996 to 2000, a position that he left in 2001 to become a White House fellow.

After his fellowship from 2002 to 2003, Mr. Kobach was counsel to Attorney General John Ashcroft. In this position, he served as the Attorney General's chief legal and policy adviser on immigration law and border security. He is a summa cum laude graduate of Harvard University, with a B.A. in Government. After graduating first in his class from the government department at Harvard, Mr. Kobach was a Marshall Scholar at Oxford University where he received a master's and a doctorate in politics.

He returned to the United States and received his juris doctor from Yale Law School in 1995. Mr. Kobach is the author of numerous books and scholarly publications. Welcome, Professor.

Jim Edwards is an adjunct fellow with the Hudson Institute and a principal and co-founder of Olive Edwards Public Affairs, where he focuses on health care, homeland security, and other domestic policy issues. He formerly served as assistant vice president of communications at the Health Care Leadership Council. Before entering the private sector, Dr. Edwards was legislative director to U.S. Representative Ed Bryant, where he handles the Congressman's Judiciary Committee assignment. He began his congressional career on the staff of U.S. Senator Strom Thurmond. Dr. Edwards earned his doctorate at the University of Tennessee and his bachelor's and master's degree at the University of Georgia. He was



also selected by the Claremont Institute for its prestigious Lincoln Fellows in Constitutional Government class in 1998.

He co-authored "The Constitutional Politics of Immigration Reform," which was nominated for the Hardeman Prize. His writing has appeared in the New York Times, Christian Science Monitor, Investor's Business Daily, and American Outlook. Welcome, Doctor.

Gordon Quan is the Mayor Pro Tem of Houston, Texas. He chairs the Houston City Council's Housing Initiatives, Ethics, and Council Governance Committees and also serves as a member of several other committees. He has been recognized for his work on Houston's City Council, having been the recipient of the Vision in America Award in 2001 by the International Channel for his work in immigrants' rights and having been selected Council Member of the Year for 2002 by the Houston Police Officers Union.

Mr. Quan is also an immigration attorney at the firm of Quan, Burdette & Perez. He earned his Bachelor of Arts degree in History and Government at the University of Texas at Austin and his master's degree in education from the University of Houston, followed by a law degree from South Texas College of Law. Welcome, Mayor.

Mr. QUAN. Thank you.

Mr. HOSTETTLER. Gentlemen, each of you will have 5 minutes. Without objection, your full opening statement will be available for the record, and if you could summarize and keep it within the 5 minutes, we would very much appreciate it.

Mr. Morganelli.

**STATEMENT OF JOHN M. MORGANELLI, DISTRICT ATTORNEY,  
NORTHAMPTON COUNTY, PENNSYLVANIA**

Mr. MORGANELLI. Good afternoon. Thank you very much for inviting me. As was mentioned, my name is John Morganelli. I'm the elected district attorney in Northampton County, Pennsylvania, where I have served as district attorney for 12 years, and I am a past president of the statewide association of prosecutors.

Every two—twice a year in Northampton County, we have a naturalization service where new citizens of the United States are admitted to citizenship. It's a ceremony that occurs all across courthouses around this great country, and I go to it. And it's a very moving ceremony, people who came to the United States legally, have followed the rules, who did what was required to become U.S. citizens, and now enjoy what our country has to offer them.

I have no doubt when I watch them carrying American flags and swearing to the oath of naturalization and citizenship that they, like many who came before them and many that will come after them, will be productive citizens, contributing to the greatness of America.

Unfortunately, there are also those who come to America illegally. They come not with an intent to commit to the American way, but, rather, to evade the law, commit crime, and impact negatively on our country. In the last 10 years, there has been a staggering increase in the number of illegal aliens residing not only in the United States but in my home State of Pennsylvania. INS, now ICE, estimated that the illegal population of Pennsylvania in 1992 to be about 27,000. In 1996, that number jumped to 37—jumped 37 percent to approximately 37,000. The 2000 Census suggests that

the number of illegal aliens in Pennsylvania is now somewhere between 100,000 and 200,000. As all of you know, nationwide the estimate is between 9 and 13 million.

Despite the voices of those who believe that the influx of these 9 to 13 million illegal aliens is a positive thing, the fact of the matter is that illegal immigration is having an extremely negative impact upon America at many levels. Unfortunately, many, if not all, of illegal aliens who are here are engaged in criminal activity. Identity theft, use of fraudulent Social Security numbers and green cards, tax evasion, driving without licenses represent some of the crimes that are engaged in by most of the illegal aliens on a daily basis merely to maintain and hide their illegal status. In addition, violent crime and drug distribution and possession is also prevalent. Over 25 percent of today's Federal prison population are illegal aliens. In some areas of the country, 12 percent of felonies, 25 percent of burglaries, 34 percent of thefts are committed by illegal aliens. The numerous crimes such as identity theft and fraud, use of false identification, is causing havoc with recordkeeping systems, including but not limited to Social Security, income tax, and other compilation of data that we routinely rely upon for accuracy and identity verification.

Just about every single day, municipal and State police come in contact with illegal aliens routinely through traffic stops and complaints by citizens. When police encounter these individuals, they find most of the time that they are utilizing fraudulent documents, false names, and other people's identities. Identification of these individuals is impossible and, quite frankly, many of the illegal aliens committing crimes here in the United States have criminal records from their country of origin, which cannot be ascertained because of their continuing use of false identities. Clearly, in addition to being a crime issue, the growing illegal alien population is also a national security issue, as was stated recently by the FBI.

What we see is a number of problems. For example, we know from comments made by retired Deputy Chief of Border Patrol in Blaine, Washington, Eugene Davis, who said recently that there was no effort to locate 95 percent of aliens apprehended in his region over the past 10 years and released pending deportation hearings. According to Davis, these illegal aliens have simply been allowed to disappear in the United States. No one knows whether a number of these missing persons are trained terrorists who will emerge later to perpetrate acts of terrorism inside our country.

And then there is the direct cost to taxpayers. In Pennsylvania, the financial cost to the taxpayers is staggering. Pennsylvania requested from the Federal Government in fiscal year '99 for about 196,000 days of incarceration money from you to help pay for the costs of detaining illegal aliens in State and local jails. The cost to Pennsylvania taxpayers was \$13,350,000. Under the SCAAP program, we received \$5 million, leaving \$8 million of uncompensated cost to be footed by Pennsylvania taxpayers. In fiscal year 2000, our State received \$4.3 million.

Clearly, illegal immigration in the United States is a negative and not a plus and must be addressed for a variety of reasons. But the solution lies in empowering local and State police with the authority to arrest, detain illegal aliens they come in contact with.

Clearly, the CLEAR Act, which you are considering, would expressly authorize local and State law enforcement to investigate, apprehend, and detain aliens in the United States. The CLEAR Act provides incentives for those municipalities and States who, for whatever reasons, want to recognize the seriousness of this problem and also penalties for those who do not recognize the seriousness of this growing problem.

In Pennsylvania, not only in the Lehigh Valley where I serve as DA, law enforcement has taken an interest in identifying and removing illegal criminal aliens. There have been efforts in the Scranton, Wilkes-Barre area by local police and in western Pennsylvania where Congressman Hart serves.

But, unfortunately, local and State law enforcement at the present time have to rely on Federal officials. In the past, the Federal Government has shown very little interest in this issue. For example, on a number of occasions, my office, as well as local and State police, have come in contact with illegal aliens who admit their illegal status, and most of them, by the way, admit that they're illegally in the country as soon as they're inquired by law enforcement. When Federal agencies such as ICE were contacted, we were often told that as long as these criminal aliens were not committing any additional crimes, they should just be released and let go. I have also been told in the past that INS "discourages this type of investigation." In other words, it's not enough for them to be aware of the fact that there are thousands of illegal aliens in our communities; we are told they must essentially be doing some other type of crime—and by that mostly is felony crimes rather than misdemeanors—before they will get interested in the matter.

When arrests are made by local and State police on State charges, like identity theft, fraudulent documents, we then get word later that these individuals have been released by an immigration judge and told that they should leave the country in 6 months. Within a short period of time, we see them back in my jurisdiction, utilizing another false identity and another Social Security card.

In my view, the thinking has to change in Washington, and the CLEAR Act is an indication—would be an indication from the Congress that the thinking has, in fact, changed. The fact of the matter is that the cost to society from illegal aliens is so severe, we can no longer leave this exclusively to the Federal Government. Local prosecutors, local and State police must be empowered and aggressive with respect to the issue.

Some may argue that most local police departments don't want to enforce immigration violations and have resisted the idea of using their officers to track down illegal immigrants, and that may be the case in some jurisdictions. But that is not the case to deprive the law enforcement community across this great country in those areas where we want to address the problem.

I believe that now in the wake of September 11th, a growing percent of law enforcement wants to be involved because they equate this illegal immigration issue with protecting national security, and they are involved. We are involved. You have seen pilot programs in the State of Florida that empowers local law enforcement and have worked out agreements with the Justice Department.

In summary, let me state the following: As a State prosecutor, I believe this legislation is necessary. However, I do caution that the ultimate success of this goal will be based on the political will of both political parties here in Washington. For some reason, it appears to me just as a normal citizen that both political parties are really not interested in addressing this issue in any meaningful way. I was excited to hear that this legislation was being proposed because it may be an indication that we are getting serious to address this growing problem in our country.

Obviously, the CLEAR Act is not a panacea and perhaps it needs to be tweaked along the suggestions made by some of the Members of this Committee. But it is the only way we are going to address the problem because Federal officials do not come in contact with illegal aliens on a daily basis. It's the local and State police that do, and they are the people that have to have the power to act or the problem will continue to get worse.

Lastly, let me say that also some attention must be given to immigration judges. My experience is that immigration judges routinely release those who have been arrested by local law enforcement, convicted of an identity crime, taken out by INS on a detainer to York, Pennsylvania, where our holding area is, and they release them routinely back into the population and tell them that they should be out of the country in 60 days or 6 months. And you know that no one's leaving. They disappear into American society, sometimes back to my own jurisdiction, adopt a new false name, new false documents, and resume their illegal status in our country.

The efforts to clean up this mess can only be done legislatively by way of the CLEAR Act, which recognizes that it has to be involving local law enforcement. It must empower us or the problem will grow.

I'd like to thank all of you, the Chairman of the Committee particularly, for inviting me to offer these comments today. Thank you very much.

[The prepared statement of Mr. Morganelli follows:]

PREPARED STATEMENT OF JOHN M. MORGANELLI

Good afternoon. My name is John M. Morganelli and I am the elected District Attorney in Northampton County, Pennsylvania. I have served as District Attorney for twelve (12) years and I am a past President of the Pennsylvania District Attorneys Association, a statewide Association of prosecutors in Pennsylvania.

On June 25, 2003 there occurred in Northampton County a ceremony that is often repeated in courthouses throughout the United States. A number of individuals from all parts of the world participated in a naturalization ceremony that resulted in new citizens of the United States of America. I had the pleasure of meeting some of these individuals who were beaming with pride, carrying American flags as they swore the oath of naturalization and U.S. citizenship. These people immigrated to the United States legally, followed the rules, did what was required to become U.S. citizens and now enjoy what America has to offer them. I have no doubt that they, like many before them and many who will come after them, will be productive citizens contributing to the greatness of America.

Unfortunately, there are also those who come to America illegally. They come not with an intent to commit to the American way, but rather to evade the law, commit crime and impact negatively on our country. In the last ten (10) years, there has been a staggering increase in the number of illegal aliens residing in Pennsylvania. INS, now ICE, estimated that the illegal alien population of Pennsylvania in 1992 to be about 27,000. In 1996 that number jumped 37% to approximately 37,000. The 2000 census suggests that the number of illegal aliens in Pennsylvania is some-

where between 100,000 and 200,000. Nationwide, the estimates of illegal aliens living in the United States is somewhere between 9 and 13 million.

Despite the voices of those who naively believe that the influx of this estimated 9 to 13 million illegal aliens into the United States is a positive thing, the fact of the matter is that illegal immigration is having an extremely negative impact upon America at many levels. Unfortunately, the majority of illegal aliens who are here are engaged in criminal activity. Identity theft, use of fraudulent social security numbers and green cards, tax evasion, driving without licenses represent some of the crimes that are engaged in by the majority of illegal aliens on a daily basis merely to maintain and hide their illegal status. In addition, violent crime and drug distribution and possession is also prevalent among illegal aliens. Over 25% of today's federal prison population are illegal aliens. In some areas of the country, 12% of felonies, 25% of burglaries and 34% of thefts are committed by illegal aliens. The numerous crimes being committed by illegal aliens such as identity theft, fraud and use of false identification is causing havoc with record-keeping systems including but not limited to Social Security, income tax and other compilation of data that we have routinely relied upon for accuracy and identity verification. Just about every day, municipal and state police come in contact with illegal aliens who are utilizing fraudulent documents, false names and other people's identities. Identification of these individuals is impossible and, quite frankly, many of the illegal aliens committing crimes here in the United States have criminal records from their country of origin which cannot be ascertained because of their continuous use of false identities. Clearly, in addition to being a crime issue, the growing population of illegal aliens in the United States is without a doubt the single most important national security issue facing us. As an example of that, in May 2002 federal agents arrested 2 Egyptian nationals for trying to smuggle illegal Middle Eastern immigrants into New Jersey by way of Mexico. For a fee of \$8,000.00, court documents showed the suspected smuggling ring flew customers on tourist visas to Brazil, then sent them to Guadmalala through Mexico and finally across the southwest border into the U.S. With regard to our northern border in Blaine, Washington, a retired Deputy Chief of Border Patrol Agent Eugene Davis stated recently that there has been no effort to locate 95% of aliens apprehended in his region over the past 10 years and released pending deportation hearings. According to Davis, these illegal aliens have simply been allowed to disappear into the United States. No one knows whether a number of these missing persons are trained terrorists who will emerge to perpetrate more acts of terrorism inside the United States.

Then, there is the direct cost to taxpayers as a result of the criminal acts committed by illegal aliens. In Pennsylvania the financial cost to taxpayers is staggering. Pennsylvania requested compensation from the federal government in fiscal year 1999 for the incarceration expenses for about 196,676 days of detention for illegal aliens in state and local jails and prisons. The cost to Pennsylvania taxpayers amounted to \$13,350,000.00. Under the "State Criminal Alien Assistance Program" (SCAAP), Pennsylvania received \$5 million leaving \$8 million of uncompensated cost to be footed by Pennsylvania taxpayers. In fiscal year 2000, Pennsylvania received \$4.3 million. Payments to the states were lower overall so local taxpayers were faced to absorb a much larger share of the cost of criminal illegal alien incarceration. Clearly, illegal immigration into the United States is a negative and not a plus and must be addressed for a variety of the aforesaid reasons. But the solution lies in empowering local and state police with the authority to arrest, detain and deport illegal aliens. Clearly, the CLEAR Act, which you are considering today, would expressly authorize local and state law enforcement to investigate, apprehend, detain and remove aliens in the United States. The CLEAR Act provides economic incentives and penalties for those municipalities and states who for whatever reasons do not recognize the seriousness of this problem and fail or lack the desire to help with this growing problem. In Pennsylvania, not only in the Lehigh Valley where I serve as the District Attorney, law enforcement has taken an interest in identifying and removing illegal aliens. There have been efforts in the Scranton Wilkes-Barre area by local police and in western Pennsylvania to deal with this issue but, unfortunately, local and state law enforcement at the present time have to rely on federal officials. In the past, the federal government has not shown much interest in this issue. For example, on a number of occasions, my office as well as local and state police have come into contact with illegal aliens who have admitted their illegal status and entry into the United States. When federal agencies such as the INS now ICE were contacted, we were often told that as long as these criminal aliens were not committing additional crimes, they should just be let go. I have also been told that in the past INS discourages "this type of investigation." In other words, it is not enough for them to be aware of the fact that there are thousands of illegal aliens living in our communities, we are told that they must essentially

be committing some other type of crime before the federal government would get involved. When arrests are made by local police on state charges such as identity theft, etc. INS will often inform us that they are "not interested" in detaining and deporting these kinds of illegal immigrants. For some reason, the federal government continues to believe that immigration violations by themselves do not warrant much enforcement. In my view, this thinking must change and the CLEAR Act certainly is an indication from the Congress that the thinking has in fact changed. The fact of the matter is that the cost to society from the impact of illegal aliens is so severe, we can no longer afford not to act or leave this problem exclusively to the federal government. Local prosecutors, local and state police must be empowered, aggressive and diligent with respect to the presence of illegal aliens. Although some may argue that most local police departments do not want to enforce immigration violations and have resisted the idea of using their officers to track down illegal immigrants, reasoning that crime fighting is better served by building relationships of trust in immigrant communities, I believe that now in the wake of September 11, 2001 a growing percent of law enforcement agencies around the country are beginning to equate illegal immigration and immigration enforcement with protecting national security and they want to be involved. You have seen pilot programs in the state of Florida empowering local law enforcement to enforce immigration laws. Implementation of the provisions of the CLEAR Act would, perhaps, make unnecessary the memorandums of understandings that some jurisdictions are seeking with the Justice Department in order to obtain power for state and local police to enforce immigration laws.

In summary, let me therefore state unequivocally that as a state prosecutor, I believe that this legislation is necessary. However, I caution you that the ultimate success of this goal will be based upon the political will of both political parties here in Washington. Quite frankly, I am not very optimistic. I believe that both the Republicans and the Democrats are to blame for the present lack of enthusiasm on the part of the government to enforce immigration laws. Business interests that often influence Republican Party politics clearly want cheap labor and often employ illegal aliens in menial jobs paid less than the minimum wage. On the other hand, the Democratic Party continuously at the national level panders to ethnic politics. Obviously, the CLEAR Act is not a panacea and we cannot overnight deal with the issue of the huge invasion of illegal aliens into America. And, it is also clear that even with an aggressive approach to enforcement and passage of the CLEAR Act, we continue to have the problem of hundreds of thousands of illegal aliens invading our country on a regular basis through our northern and southern borders. And lastly, there must also be attention to immigration judges who routinely, after local law enforcement has apprehended, arrested and prosecuted an illegal alien, often release these illegal aliens back out into the community on ROR or minimal bail with an order for them to deport. Of course, these illegal aliens again disappear into American society, adopt a new false identity, a new false name and relocate to some other community. Occasionally, we have seen the people that we have prosecuted come right back to my area resuming again their jobs, life under another name and another social security number. The effort to clean up this mess cannot only be done legislatively via the CLEAR Act, but must recognize the other areas related to immigration enforcement that also must be addressed. Nevertheless, the CLEAR Act is necessary because without an empowered municipal and local departments throughout the United States, the problem will continue to grow and get worse.

I would like to thank the Chairman of the Committee and members of the Committee for inviting me to offer these comments today.

Mr. HOSTETTLER. Thank you, Mr. Morganelli.  
Professor Kobach.

**STATEMENT PROFESSOR KRIS W. KOBACH, ASSOCIATE  
PROFESSOR OF LAW, UNIVERSITY OF MISSOURI KANSAS CITY**

Mr. KOBACH. Thank you, Mr. Chairman. In my testimony, I will do two things: first, I will briefly summarize the legal basis by which State and local police may make immigration arrests under current law; and then I will briefly review some of the more salient provisions of the CLEAR Act.

It's long been widely recognized that State and local police have the authority to make arrests for criminal violations of the INA, the Immigration and Nationality Act. But where some confusion

has existed in recent years has been on the question of whether that same authority extends to civil violations of the act that render an alien deportable. That confusion was, to some extent, fostered by an erroneous 1996 OLC opinion of the Department of Justice. In 2002, OLC corrected this error, withdrew the relevant portion of the '96 opinion from its website, and produced a new opinion which analyzed the issue. Although the Attorney General did not publicize that opinion, the Attorney General did announce the conclusion thereof that arresting aliens who have violated either criminal provisions of the act or civil provisions that render the alien deportable is within the inherent authority of the States.

That said, I will proceed now to offer my own analysis of this issue and offer some of my reasons why I believe this is the correct conclusion on this important question.

The source of this authority flows from the States' status as sovereign entities. It inheres in the ability of one sovereign to assist another sovereign in the enforcement of its laws. This is the same inherent authority that exists when a State police officer observes a criminal violating a Federal law and goes ahead and makes the arrest. It is the—there is no Federal statute that conveyed that authority or empowered the State police officer to do that. It is, rather, the inherent authority of one sovereign to assist the other sovereign in law enforcement. And there's abundant case on the point, abundant Supreme Court cases on that point: *U.S. v. Di Re*, *Miller v. United States*. And you can read my testimony if you are really interested in reading those quotes.

But the Ninth and Tenth Circuits have taken this general principle and applied it specifically to immigration law, and there, again, you have very clear law. The Tenth Circuit opined that, "A State trooper has general investigatory authority to inquire into possible immigration violations." That's from *U.S. v. Salinas-Calderon*, and the same court applied preemption analysis to determine whether a Federal statute "limits or displaces the pre-existing general authority of State or local police officers to investigate and make arrests for violations of Federal law, including immigration laws." That's *U.S. v. Vasquez-Alvarez*.

Well, the courts, concluding that the authority is an inherent one, have then turned to the next question of whether there has been any Federal preemption of this inherent authority, and here, again, the courts' conclusions are unequivocal. In the context of State arrests for violations of criminal—of Federal law, there's a strong presumption against preemption, and it's useful to note this at the outset because essentially the States are helping the Federal Government enforce their own laws, and it is presumed generally that the Federal Government would like such cooperation.

But the Congress in 1996 put to rest any further doubt on this question when Congress itself added section 287(g) of the Immigration and Nationality Act and stated that a formal agreement of the like we've seen in Florida is not actually necessary "for any officer or employee of a State or political subdivision of a State otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States." That's quoting from the act.

The case law supporting this is equally strong, the notion that there has been on preemption. The Tenth Circuit has issued several opinions on the subject, all very clearly on point. The Fifth Circuit has also rejected the notion that Congress has preempted the inherent arrest authority in *Lynch v. Cannatella*. The court considered 8 U.S.C. 1223 and concluded, "No statute precludes other Federal, State, or local law enforcement agencies from taking other action to enforce this Nation's immigration laws."

The legal analysis aside, now we'll get to the more interesting part, I suppose, and that is, some thoughts on the CLEAR Act.

I believe that the CLEAR Act is an important step that must be taken if we are serious in our efforts to improve voluntary cooperation between Federal, State, and local authorities and to maximize the effect of this cooperation. I do have, however, several suggestions about how the act might be improved, how the draft might be improved. One is that the current wording in section 101 says that law enforcement personnel of a State are "authorized." I would urge the Committee to stay away from the use of the word "authorized" because that implies that this is a power being conveyed by Congress. And, of course, the power already exists. It flows from their inherent arrest authority. And the alternative phrasing can be found in my written testimony.

Section 103, I think this is a particularly important provision of the act. It's estimated that the net cost of illegal immigration totals in excess of \$40 billion a year, and the forfeiture of assets is a useful way for State governments, who suffer a large amount of that burden, for them to recover some of those costs.

I would also like to offer some suggestions for improving section 103. It would be useful to create a blanket criminal misdemeanor offense that applies to any alien who violates any provision of U.S. immigration law. That would eliminate any ambiguity that still persists out there among people who haven't heard my testimony today.

The second suggestion is that—another phrasing change concerning those aliens whose visa is good for a period longer than their period of authorized stay in the United States. That's something that's quite common with B visas or tourist visas.

The sharing of information in section 104, also a very important provision of this act. I suggest that the Committee definitely keep this in there, then perhaps reword the section even more strongly to make it clear that this obligation is unmistakable and to accelerate the entry of names into NCIC, the National Criminal Information Center system.

I'd just like to point out just how critical this is with respect to the alien absconder program. Absconders—alien absconder problem. Absconders, as you know, are individuals who've already had their day in immigration court. They've already been, quote, deported. The problem is that if they aren't actually detained, more than 90 percent of people who are adjudicated deportable are never actually deported, and they abscond, become fugitives. There are now more than 400,000 absconders at large in American society. These aliens have had their day in court. They've disobeyed the final order of removal. In 2001, at the end of the year the Department of Justice and the INS launched the absconder initiative to



start loading the names of these individuals into the NCIC system so that local police could pull them up in their squad car computers.

The initiative has yielded many valuable arrests, but there is one problem, that is, that the entry of names into NCIC is occurring at an alarmingly slow rate. Indeed, we are seeing more absconders created, if you will, than we are seeing names entered. It's not keeping pace. And I think the CLEAR Act can help solve this problem by making it crystal clear that the Federal immigration authorities need not—one of the barriers to rapid entry of names is they are currently trying to ascertain whether an alien actually received actual notice of his deportation order. And, of course, if the alien has left town or changed address without notifying officials—which quite frequently happens—there won't be proof of actual notice. The CLEAR Act could clarify this, that this isn't something that the immigration authorities need to worry about in the loading of names. And certainly the legal authority exists to take that position.

Lastly, I would suggest that the Committee consider, as it looks under the hood, so to speak, tinkering with another part of this engine that is so important, and that is driver's licenses. As the Committee is no doubt aware, the issuance of driver's licenses to illegal aliens jeopardizes immigration law enforcement, general law enforcement, and national security. Driver's licenses allow people who are here in violation of immigration laws to operate with ease in American society and escape the scrutiny that might otherwise occur had—if they did not have those licenses, and you may also know that the driver's license is an effective passport on the Northern border. Any alien who can make a good case that he is a U.S. citizen and bluff his way across the border now has a platform for crossing that border with ease.

In addition, you have the opportunities for criminals that are opened up because States that allow illegal aliens to acquire these licenses necessarily have to reduce the threshold of documentation for the issuance of such a license. When that happens, it's more—it is more easily done for criminals or illegal aliens to obtain the licenses that back up a false identity. And that false identity can either be used as a cover for previous criminal acts or it can be used as a platform for future criminal acts. And, of course, as I'm sure many of the Committee Members know, it can also be a useful tool for terrorists. Eight of the hijackers of 9/11 used Virginia driver's licenses, undoubtedly, to board the planes on that fateful day. And I think the Committee should address possible ways of solving that problem, which might include making highway funds subject to appropriate issuance of driver's licenses.

In summary, it is clear that there is substantial legal authority already for State and local police to make immigration arrests, but it's also clear that there's great potential to improve the situation. Much more can and should be done, and I believe the CLEAR Act would improve the situation substantially.

[The prepared statement of Mr. Kobach follows:]

## PREPARED STATEMENT OF KRIS W. KOBACH

The terrorist attacks of September 11, 2001, underscored for all Americans the need to restore the rule of law in the immigration arena. Terrorists were able to enter the country undetected, overstay their visas with impunity, and move freely within the country without interference from local law enforcement officers. Each of these realities created a vulnerability that the hijackers of September 11 exploited.

Enforcing our nation's immigration laws is one of the most daunting challenges faced by the Federal Government. With more 8–10 million illegal aliens already present in the United States and fewer than 2000 interior enforcement agents at its disposal, the Bureau of Immigration and Customs Enforcement (BICE) has a Herculean task on its hands—one that it simply cannot accomplish alone.

The assistance of state and local law enforcement agencies can mean the difference between success and failure in enforcing the immigration laws. The more than 650,000 police officers nationwide represent a massive force multiplier.

I will briefly summarize the legal authority upon which state and local police may currently act in rendering such assistance and then review relevant provisions of the proposed CLEAR Act. I will not cover the provisions of Section 287(g) of the Immigration and Nationality Act (INA), since the scope of such delegated authority is evident on the face of the act. Rather, I will discuss the inherent authority that has been possessed and exercised by state and local police since the earliest days of federal immigration law.

It has long been widely recognized that state and local police possess the inherent authority to arrest aliens who have violated *criminal* provisions of the INA. Once the arrest is made, the police officer must contact federal immigration authorities and transfer the alien into their custody within a reasonable period of time. Bear in mind that the power to arrest, and take temporary custody of, an immigration law violator is a subset of the broader power to “enforce.” This is most salient distinction between inherent *arrest* authority and 287g authority to *enforce*—which includes arresting, investigating, preparing a case, and all of the other powers of the exercised by BICE agents.

Where some confusion has existed in recent years is on the question of whether the same authority extends to arresting aliens who have violated civil provisions of the INA that render an alien deportable. This confusion was, to some extent, fostered by an erroneous 1996 opinion of the Office of Legal Counsel (OLC) of the Department of Justice, the relevant part of which has since been withdrawn by OLC. However, the law on this question is quite clear: arresting aliens who have violated either criminal provisions of the INA or civil provisions that render an alien deportable “is within the inherent authority of the states.”<sup>1</sup> And such arrest authority has never been preempted by Congress.

This conclusion has been confirmed by every court to squarely address the issue. Indeed, it is difficult to make a persuasive case to the contrary. That said, I will proceed to offer my opinion as to why this conclusion is correct. I offer this opinion purely in my private capacity as a law professor and not as a representative of the Bush Administration.

## THE INHERENT ARREST AUTHORITY POSSESSED BY STATES

The preliminary question is whether the states have inherent power (subject to federal preemption) to make arrests for violation of federal law. That is, may state police, exercising state law authority only, make arrests for violation of federal law, or do they have power to make such arrests only insofar as they are exercising delegated federal executive power? The answer to this question is plainly the former.

The source of this authority flows from the states' status as sovereign entities. They are sovereign governments possessing all residual powers not abridged or superceded by the U.S. Constitution. The source of the state governments' power is entirely independent of the U.S. Constitution. See *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122, 193 (1819). Moreover, the enumerated powers doctrine that constrains the powers of the federal government does not so constrain the powers of the states. Rather, the states possess what are known as “police powers,” which need not be specifically enumerated. Police powers are “an exercise of the sovereign right of the government to protect the lives, health, morals, comfort, and general welfare of the people . . .” *Manigault v. Springs*, 199 U.S. 473, 480 (1905). Essentially, states may take any action (consistent with their own constitutions and laws)

<sup>1</sup>See ATTORNEY GENERAL'S REMARKS ON THE NATIONAL SECURITY ENTRY-EXIT REGISTRATION SYSTEM, Washington, D.C., June 6, 2002.

unless there exists a prohibition in the U.S. Constitution or such action has been preempted by federal law.<sup>2</sup>

It is well established that the authority of state police to make arrests for violation of federal law is not limited to those situations in which they are exercising delegated federal power. Rather, such arrest authority inheres in the States' status as sovereign entities. It stems from the basic power of one sovereign to assist another sovereign. This is the same inherent authority that is exercised whenever a state law enforcement officer witnesses a federal crime being committed and makes an arrest. That officer is not acting pursuant to delegated federal power. Rather, he is exercising the inherent power of his state to assist another sovereign.

There is abundant case law on this point. Even though Congress has never authorized state police officers to make arrest for federal offenses without an arrest warrant, such arrests occur routinely; and the Supreme Court has recognized that state law controls the validity of such an arrest. As the Court concluded in *United States v. Di Re*, "No act of Congress lays down a general federal rule for arrest without warrant for federal offenses. None purports to supersede state law. And none applies to this arrest which, while for a federal offense, was made by a state officer accompanied by federal officers who had no power of arrest. Therefore the New York statute provides the standard by which this arrest must stand or fall." 332 U.S. 581, 591 (1948). The Court's conclusion presupposes that state officers possess the inherent authority to make warrantless arrests for federal offenses. The same assumption guided the Court in *Miller v. United States*. 357 U.S. 301, 305 (1958). As the Seventh Circuit has explained, "[state] officers have implicit authority to make federal arrests." *U.S. v. Janik*, 723 F.2d 537, 548 (7th Cir. 1983). Accordingly, they may initiate an arrest on the basis of probable cause to think that an individual has committed a federal crime. *Id.*

The Ninth and Tenth Circuits have expressed this understanding in the immigration context specifically. In *Gonzales v. City of Peoria*, the Ninth Circuit opined that the "general rule is that local police are not precluded from enforcing federal statutes," 722 F.2d 468, 474 (9th Cir. 1983). The Tenth Circuit has reviewed this question on several occasions, concluding squarely that a "state trooper has general investigatory authority to inquire into possible immigration violations," *United States v. Salinas-Calderon*, 728 F.2d 1298, 1301 n.3 (10th Cir. 1984). As the Tenth Circuit has described it, there is a "preexisting general authority of state or local police officers to investigate and make arrests for violations of federal law, including immigration laws," *United States v. Vasquez-Alvarez*, 176 F.3d 1294, 1295 (10th Cir. 1999). And again in 2001, the Tenth Circuit reiterated that "state and local police officers [have] implicit authority within their respective jurisdictions 'to investigate and make arrests for violations of federal law, including immigration laws.'" *United States v. Santana-Garcia*, 264 F.3d 1188, 1194 (citing *United States v. Vasquez-Alvarez*, 176 F.3d 1294, 1295). None of these Tenth Circuit holdings drew any distinction between criminal violations of the INA and civil provisions that render an alien deportable. Rather, the inherent arrest authority extends generally to violations of federal immigration law.

#### THE ABSENCE OF CONGRESSIONAL PREEMPTION

Having established that this inherent state arrest authority exists, the only remaining question is whether such authority has been preempted by Congress. In conducting preemption analysis, courts must look for (1) express preemption by congressional statement, (2) field preemption where the federal regulatory scheme is so pervasive as to create the inference that Congress intended to leave no room for the states to supplement it, or (3) conflict preemption, where compliance with both state and federal law is impossible or state law prevents the accomplishment of congressional objectives. See *Gade v. National Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992) (plurality opinion). In all three categories, there must exist manifest congressional intent for preemption to exist.

Moreover, in the context of state arrests for violations of federal law, there is a particularly strong presumption against preemption. Normal preemption cases involve: (1) state legislation or regulation (2) that is at odds with federal purposes. However, state arrests for violations of federal law, involve: (1) state executive action (2) that is intended to assist the federal government in the enforcement of federal law. The critical starting presumption must be that the federal government did not intend to deny itself any assistance that the states might offer. This presumption was explained in 1928 by Judge Learned Hand, who stated that "it would be

<sup>2</sup>See Eriwin Chemerinsky, CONSTITUTIONAL LAW: PRINCIPLES AND PRACTICE 166, 282 (1997).

unreasonable to suppose that [the federal government's] purpose was to deny itself any help that the states may allow." *Marsh v. United States*, 29 F.2d 172, 174 (2d Cir. 1928).

In 1996, Congress expressly put to rest any suspicion that it did not welcome state and local assistance in making immigration arrests. Congress added section 287(g) to the INA, providing for the establishment of written agreements with state law enforcement agencies to convey federal immigration enforcement functions to such agencies. In doing so, Congress reiterated its understanding that states and localities may make immigration arrests regardless of whether a 287(g) agreement exists. Congress stated that a formal agreement is *not necessary* for "any officer or employee of a State or political subdivision of a state . . . to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States," or "otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States." 8 U.S.C. § 1357(g)(10).

Consequently, it is hardly surprising that no appellate court has expressly ruled that states are preempted from arresting aliens for civil violations of the INA. The only case that even comes close is the 1983 opinion of the Ninth Circuit in *Gonzales v. City of Peoria*, 722 F.2d 468 (9th Cir. 1983). In *Gonzales*, the Ninth Circuit held that local police officers have the authority to arrest an alien for a violation of the criminal provisions of the INA if such an arrest is authorized under state law. In that instance, a group of persons of Mexican descent challenged a policy of the City of Peoria, Arizona, that instructed local police to arrest and detain aliens suspected of illegally entering the United States in violation of the criminal prohibitions of section 1325 of title 8. *See* 722 F.2d at 472–73. Observing that local police generally are not precluded from enforcing federal statutes and that concurrent enforcement authority is authorized where local enforcement would not impair federal regulatory interests, the court engaged in a preemption analysis to determine whether Congress had precluded local enforcement of this criminal provision of the INA. The court concluded that no such preemption had occurred. *See id.* at 475. In passing, the Ninth Circuit "assume[d] that the civil provisions of the [INA] . . . constitute . . . a pervasive regulatory scheme" that suggested a congressional intent to preempt local enforcement, *id.* at 474–75. However, this possibility of field preemption was merely an *assumption*, asserted without any analysis, and made in *dictum*—entirely outside of the holding of the case (which concerned a criminal offense). It does not constitute binding precedent. And even if the Ninth Circuit had squarely reached this conclusion in 1983, such a holding would have been fatally undermined by the court's failure to apply the strong presumption against preemption discussed above. In addition, the subsequent actions of Congress in 1996 made such a holding unsustainable.

In contrast, the case law supporting the conclusion that Congress has *not* preempted state arrests of aliens for violations of civil provisions of the INA is solid and on point. The Tenth Circuit has issued several opinions on the subject, all pointing to the conclusion that Congress has never sought to preempt the states' inherent authority to make immigration arrests for both criminal and civil violations of the INA. Its 1984 ruling in the case of *United States v. Salinas-Calderon*, 728 F.2d 1298 (10th Cir. 1984), confirmed the inherent arrest authority possessed by the states. The defendant in that case was the driver of a pickup who had been arrested for the criminal violation of transporting illegal aliens. He had been stopped by a state trooper for driving erratically. The driver and his wife were in the cab; and six passengers, none of whom spoke English, were in the back of the pickup. The defendant claimed that a state trooper did not have the authority to detain the transported passengers while he questioned them about their immigration status. In rejecting this claim, the Tenth Circuit held that a "state trooper has general investigatory authority to inquire into possible immigration violations." 728 F.2d at 1301 n.3. The court did not differentiate between criminal and civil violations. Indeed, because there is no indication in the opinion that there was any reason to believe that the alien passengers had committed any criminal violations, the court's statement appears to apply fully to civil as well as criminal violations.

The Tenth Circuit's most salient case on the preemption question is *U.S. v. Vasquez-Alvarez*, 176 F.3d 1294 (10th Cir. 1999). In that case, an Oklahoma police officer arrested the defendant because he was an "illegal alien." The officer did not know at the time whether the defendant had committed a civil or criminal violation of the INA. *Id.* at 1295. It was later discovered that the alien had illegally reentered the country after deportation, in violation of 8 U.S.C. § 1326, a criminal violation. When the government indicted the defendant, he moved to suppress his post-arrest statements, fingerprints, and identity, arguing that he was arrested in violation of

8 U.S.C. § 1252c. The defendant claimed that a local police officer could arrest an illegal alien only in accordance with the conditions set forth in section 1252c and that because his arrest was not carried out according that provision it was unauthorized. Section 1252c authorizes state and local police to make a warrantless arrest and to detain an illegal alien if (1) the arrest is permitted by state and local law, (2) the alien is illegally present in the United States, (3) the alien was previously convicted of a felony in the United States and subsequently was deported or left the country, and (4) prior to the arrest the police officer obtains appropriate confirmation of the alien's status from federal immigration authorities. 8 U.S.C. § 1252c.

The Tenth Circuit's conclusion was unequivocal: section 1252c "does not limit or displace the preexisting general authority of state or local police officers to investigate and make arrests for violations of federal law, including immigration laws. Instead, section 1252c merely creates an additional vehicle for the enforcement of federal immigration law." *Vasquez-Alvarez*, 176 F.3d at 1295. The court rejected the alien's contention that all arrests not authorized by section 1252c are prohibited by it. The court reviewed the legislative history of section 1252c and analyzed that the comments of Representative Doolittle, who sponsored the floor amendment containing the text that would become section 1252c. The court concluded that the purpose of the amendment was to overcome a perceived federal limitation on this state arrest authority. However, neither Doolittle, nor the government, nor the defendant, nor the court itself had been to identify any such limitation. *Id.* at 1298–99.

The interpretation of 1252c urged by the defendant would have grossly perverted the manifest intent of Congress, which was to encourage more, not less, state involvement in the enforcement of federal immigration law. Reading into the statute an implicit congressional intent to preempt existing state arrest authority would have been entirely inconsistent with this purpose. Moreover, such an interpretation would have been inconsistent with subsequent congressional actions. As the Tenth Circuit noted, "in the months following the enactment of section 1252c, Congress passed a series of provisions designed to encourage cooperation between the federal government and the states in the enforcement of federal immigration laws." *Id.* at 1300 (citing 8 U.S.C. §§ 1103(a)(9), (c), 1357(g)). Put succinctly, the "legislative history does not contain the slightest indication that Congress intended to displace any preexisting enforcement powers already in the hands of state and local officers." *Id.* at 1299.

The Fifth Circuit has also rejected the notion that Congress has preempted the inherent arrest authority possessed by the states. In *Lynch v. Cannatella*, 810 F.2d 1363 (5th Cir. 1987), the court considered whether 8 U.S.C. § 1223(a) defined the sole process for detaining alien stowaways, thereby preempting harbor police from detaining illegal aliens as occurred in that case. The Eighth Circuit's conclusion was broad and unequivocal: "No statute precludes other federal, state, or local law enforcement agencies from taking other action to enforce this nation's immigration laws." *Id.* at 1371.

Finally, on the subject of preemption, it must be noted that the distinction between arrests by state police for criminal violations of the INA and arrests by state police for civil violations of the INA is utterly unsustainable. Any claim of field preemption would have to establish that the civil provisions of the INA create a pervasive regulatory scheme indicating congressional intent to preempt, while the criminal provisions do not. No court has ever attempted to justify such a conclusion. The INA is not separated neatly into criminal and civil jurisdictions. Nor have the regulations promulgated pursuant to the INA or the executive agencies charged with its enforcement attempted such a separation. The structure of the INA, with its numerous overlapping civil and criminal provisions, simply cannot support such a distinction.

#### THE CLEAR ACT

Passage of H.R. 2671 is an important and step that must be taken if the voluntary cooperation of state and local police in the enforcement of immigration laws is to be maximized. And such cooperation is necessary if the rule of law is ever to be fully restored to immigration in this country. I do have several suggestions that may assist the committee in strengthening H.R. 2671. They are as follows.

Section 101-Affirmation of Inherent Arrest Authority. It is important that nothing in the CLEAR Act be misinterpreted by the Executive Branch or by the Judiciary as narrowing the inherent arrest authority that the states already possess. The current wording says that "law enforcement personnel of a State . . . are *authorized*" to investigate and detain illegal aliens. I strongly recommend that the committee not use the word "authorized," because it implies that Congress is authorizing or

conferring these arrest powers upon the states. That is, of course, unnecessary since the authority is already possessed by the states and it flows from their inherent powers as sovereign entities within our federalist system. What should be stated unequivocally is that Congress has never preempted this authority. Such a statement would prevent courts from making any mistake on this account. I would also note that the inherent authority does not extend to "removal," in the broad sense of adjudicating an alien's status and returning the alien to his country of origin. Therefore, I suggest the following alternative phrasing of Section 101:

"Notwithstanding any other provision of law, it is recognized that law enforcement personnel of a State or political subdivision of a State possess the inherent authority of sovereign governments to investigate, apprehend, detain, and transport aliens who are unlawfully present in the United States (including the transportation of such aliens across State lines to detention centers or to federal custody), in the enforcement of the immigration laws of the United States. It is further recognized that no Act of Congress has ever preempted this authority with respect to either criminal violations or civil violations of federal immigration law."

Section 103-Criminal Penalties and Forfeiture of Assets. With respect to this section, I wish to note at the outset that the Committee has correctly recognized that illegal immigration imposes a massive financial burden on all levels of government. The costs of providing education, health care, and other social services, combined with the law enforcement costs that are incurred regardless of whether a state chooses to cooperate in enforcing immigration laws, are staggering. The meager taxes collected from illegal aliens do not come close to reimbursing governments at the local, state, and federal level. It is estimated that the net cost of illegal immigration totals approximately \$40 billion per year. The forfeiture of assets is an appropriate mechanism to allow governments to begin to recover these costs. It is also a substantial deterrent to those who would flaunt our immigration laws.

I would like to offer two minor suggestions to improve Section 103. First, it would be useful to create a blanket criminal misdemeanor offense that applies to any alien who violates any provision of U.S. immigration law or is unlawfully present in the United States. This would eliminate any ambiguity that persists regarding arrests for criminal versus civil violations of immigration law. It would also defeat the misinformation campaign that has been launched by organizations hostile to the enforcement of immigration laws. Second, I suggest that in Section 103(a), in the provision amending Section 275(b) of the Immigration and Nationality Act, after the phrase "after the expiration of a nonimmigrant visa" the following words should be inserted: "or after the end of the alien's period of authorized stay in the United States." This would cover those situations in which the alien's visa is valid for a period beyond the period for which the alien is actually authorized to stay in the United States. This is common with B(1) and B(2) visas that may be valid for as long as ten years, even though the alien has only been authorized to stay in the United States for a period of six months.

Section 104-Sharing of Information Through NCIC. This section is an extremely important component of the CLEAR Act. As the Committee is aware, the sharing of information with state and local law enforcement agencies through the National Criminal Information Center (NCIC) of the Department of Justice has improved substantially since the attacks of September 11, 2001. However, there are bureaucratic and institutional forces that have slowed the entry of information regarding aliens into the NCIC database. I suggest that the Committee reword Section 104 slightly, in order to (1) make the obligation to provide such information unmistakable and (2) to accelerate the entry of information regarding alien absconders. I suggest the following wording:

"Provision of Information to the NCIC.- Within 180 days after the date of the enactment of this section, the Under Secretary for Border and Transportation Security of the Department of Homeland Security shall provide the National Criminal Information Center of the Department of Justice with all information relevant for the apprehension of all persons who are known to have violated any immigration law of the United States. Thereafter, the Under Secretary shall be required to provide such information to the National Criminal Information Center with respect to each new violation that is discovered within 180 days after such violation becomes known to the Department of Homeland Security. The names and particulars of aliens who have disregarded or disobeyed a final order of removal shall be provided to the National Criminal Information Center regardless of wheth-

er the alien's failure to depart was willful and regardless of whether the alien received actual notice of the final order of removal."

The alien absconder problem is of such immense magnitude that it has made an utter mockery of the rule of law. There are now more than 400,000 absconders at large in the United States. These aliens have had their day in immigration court and have disobeyed a final order of removal. A substantial number of absconders have engaged in serious criminal activity in addition to their immigration violations. Most absconders have committed criminal violations of the INA. Others have committed civil violations only, if the underlying immigration violation was of a civil provision and the refusal to obey the order of removal was not willful. At the end of 2001, the Department of Justice and the INS launched the absconder initiative, which has continued under the Department of Homeland Security. Under this initiative, the process of listing absconders in the NCIC database was begun. Although the initiative has yielded many valuable arrests with the cooperation of state and local law enforcement, the effort has been hamstrung by the fact that the entry of names into the NCIC database has occurred at an alarmingly slow rate. Indeed, the number of absconders is growing faster than the entry of absconders into NCIC. A primary reason is for this slow rate of entry is the current practice of attempting to ascertain whether federal immigration officials effected actual notice of the final order of removal. This is, of course, difficult when the alien has changed address without informing the immigration court or when the alien has become a fugitive. The inherent legal authority of a state or local law enforcement officer to make the arrest exists regardless of whether notice was effected. Therefore, this unnecessary impediment to the rapid entry of absconder data into the NCIC system should be unequivocally removed.

Section 108-Claims by States and Localities Against the Federal Government. This section provides a useful incentive to ensure that the federal government remains a faithful partner in the cooperative effort to enforce immigration laws. I suggest only a minor clarification here. Section 108(a)(2), as currently drafted, indicates that the decisions of the administrative law judge "may be appealed only to the Attorney General or the Secretary of Homeland Security . . ." I would delete "or the Secretary of Homeland Security." Because Section 108 locates the administrative law judge within the Department of Justice, and because it is consistent with the adjudication of immigration law questions by the immigration courts of the Department of Justice, it is appropriate that the Attorney General review any appeals. Ambiguity as to the final arbiter of such cases would only exacerbate the sensitivity that will inevitably surround such cases.

New Section 114-The Issuance of Driver's Licenses to Illegal Aliens. As the Committee is no doubt aware, the issuance of driver's licenses to illegal aliens by some states jeopardizes immigration law enforcement, general law enforcement, and national security. The driver's license effectively serves as the basic identity document in America today. It is a de facto national identity card issued by more than 50 different jurisdictions. Driver's licenses allow illegal aliens to operate with ease in American society and escape the scrutiny that might otherwise occur in routine law enforcement encounters. On our northern border the driver's license operates as an effective substitute for a U.S. passport, allowing an alien who is persuasive in falsely asserting U.S. citizenship to cross the border freely.

Permitting illegal aliens to acquire driver's licenses also opens up opportunities for criminals, whether they be foreign nationals or U.S. citizens. States that allow illegal aliens to possess driver's licenses inevitably reduce the level of identity documentation that is required to obtain a license. The result is that criminals are able to use the lax standards to create false identities backed up by the imprimatur of a driver's license. Such false identities facilitate money laundering, credit card fraud, and check fraud. They also defeat the operation of the NCIC system, because criminals are able to evade arrest warrants by presenting fraudulently-obtained "clean" licenses during traffic encounters with local law enforcement officers. Worse, the driver's license becomes a useful tool in the hands of terrorists. Virginia issued licenses to eight of the 9/11 terrorists—licenses that likely were used to board the airplanes on that fateful day.

The most effective solution to this problem would be to make eligibility for federal highway funds contingent upon the states' denying driver's licenses to illegal aliens. Such funds should also be contingent upon states' setting expiration dates so that driver's licenses for legal aliens expire on the date that an alien's period of authorized stay terminates. The only documentation sufficient to qualify an alien for a driver's license should be a valid passport with a valid U.S. visa. This would allow state and local police officers to draw reasonable conclusions from an alien's possession of an unexpired driver's license.

In summary, it is clear that state and local police possess substantial inherent authority to make immigration arrests. It is also clear that the potential for closer cooperation with state and local law enforcement has not been fully exploited. Consequently, there has been a cost in the national security of the United States, as well as in the enforcement of immigration laws. The CLEAR Act would improve the situation substantially. I appreciate the efforts of this Committee to address these issues and the opportunity to share my perspective.

Mr. HOSTETTLER. Thank you, Professor.  
Dr. Edwards.

**STATEMENT OF JAMES R. EDWARDS, JR., Ph.D., ADJUNCT  
FELLOW, HUDSON INSTITUTE**

Mr. EDWARDS. Mr. Chairman and Members of the Subcommittee, thank you for the honor of testifying today.

Congressman Norwood deserves congratulations for putting together an outstanding bill. His CLEAR Act addresses all the major facets of the current problems that State or local law officers face when their routine brings them in contact with illegal or criminal aliens.

State and local law enforcement gets little cooperation from Federal immigration authorities at present. It usually goes like this: A police officer encounters an immigrant lawbreaker. The officer contacts Federal authorities. The feds say they're not coming to get the illegal alien, and so let him go.

This "let them go" pattern was well established before September 11th and continues today.

In addition to dismaying our Nation's law officers, "let them go" sends a signal to the at least 8 million illegal aliens already here—as well as to untold millions of would-be illegal aliens—that it pays to break our laws. And it's a slap in the face to the millions of legal immigrants who abided by the rules.

H.R. 2671 applies the "broken windows" model to immigration enforcement. "Broken windows" policing goes after lower-level offenses—graffiti, shoplifting, panhandling—in order to reduce more serious crimes.

"Broken windows" policing works. Experience in New York City and elsewhere confirms it, as does research by groups like the Manhattan Institute. In the immigration context, there's proof, too. Last year the National Security Entry-Exit Registration System went online. Well, in conjunction with that, ICE started holding and removing the illegal aliens who came to register, so you know what happened? NSEERS caused many illegal aliens from terrorist-sponsoring countries to begin to leave on their own.

Looking at the CLEAR Act: First, it clarifies legal authority in Federal law and it encourages States to do so. Now, it does that in a way that respects federalism and contains no unfunded mandates.

Second, H.R. 2671 enhances two-way information sharing and intelligence gathering. It informs the cop on the beat of immigration violations through the most established information-sharing tool in law enforcement, NCIC.

Third, the CLEAR Act provides additional resources. It looks for revenue not only to the Federal treasury, which is the taxpayers who abide by our laws, but also to the immigrants themselves through fines, fees, and forfeiture. The bill uses financial incentives



and maximizes existing resources, such as the Institutional Removal Program.

Importantly, the CLEAR Act does not dictate a one-size-fits-all Washington solution. Instead, it allows States and localities the flexibility to use what works best for them. H.R. 2671 would reduce Federal noncooperation through an accountability system.

H.R. 2671 strikes a balance also by safeguarding the rights of aliens, ensuring police accountability, and preserving police discretion toward victims and witnesses.

The CLEAR Act should help deter illegal immigration. Such “broken windows” policing—and the force multiplier of our Nation’s finest—can be expected to reduce the number of new illegal immigrants, lead many illegal aliens to deport themselves, and curb bigger crimes.

This approach would empower State and local police by getting them Federal cooperation rather than saddling them with the demoralizing knowledge that they’re putting known lawbreakers back on the street.

What would our Nation have been spared had we applied “broken windows” enforcement to immigration violations before September 11th? Well, of course, we’ll never know for sure. However, State or local police did encounter three of the terrorists in the days and months leading up to that date. And since then, police officers have encountered illegal aliens who are now suspected in subsequent violent crimes.

In conclusion, I believe policies like those in the CLEAR Act would be a step toward securing our borders, tackling illegal immigration, and restoring the rule of law.

Thank you, Mr. Chairman, and I am pleased to take your questions.

[The prepared statement of Mr. Edwards follows:]

#### PREPARED STATEMENT OF JAMES R. EDWARDS, JR.

Mr. Chairman and members of the subcommittee, thank you for the honor of testifying before this subcommittee. I commend you for holding this important hearing on this outstanding legislation. I approach today’s topic from the perspective of someone who, as legislative director for a former United States Attorney, Rep. Ed Bryant of Tennessee, became closely attuned to the issues before his two subcommittee assignments, the Immigration and the Crime Subcommittees.

#### THE PROBLEM

Mr. Chairman, a very common complaint of state and local law enforcement is that they get very little cooperation from federal immigration authorities.

The problem has occurred time and time again from shore to shore. And the scenario is generally the same: In the normal course of his duties, a police officer encounters an immigration violator (or several of them). He contacts federal immigration authorities; in most parts of the country, they are located many miles away. The policeman is told that no federal agent is coming to get the illegal or criminal alien, so let him go.

This “let them go” pattern was well established before September 11, 2001. Troublingly, it remains common since September 11. Billings, Montana, Police Chief Ron Tussing responded with well-founded skepticism, as reported in the Billings Gazette last year, after U.S. Attorney General John Ashcroft asked a convention of police chiefs to help secure the homeland by calling federal agents whenever local police take immigration violators into custody. Chief Tussing said, “We’d call them (INS) up and they’d say let them go, we’re too busy.”

In a post-September 11 world, “let them go” is unacceptable.

A 29-year veteran assistant chief with the Border Patrol characterized the problem of illegal immigration to me as “worse than epidemic.” He said the practice of

the Immigration Service has changed - but for the worse, now actually aiding and abetting more and more illegal immigration. This agent said the Immigration and Naturalization Service practice when he started out was to detain all illegal aliens; the only aliens INS released before deportation had extraordinary extenuating circumstances. But now, aliens are routinely released; the only ones held in custody are those with unusual circumstances.

These "let them go" policies and practices have real-world consequences. "Let them go" policies apparently contributed to the year-long rape rampage of Reynaldo Elias Rapalo, the recently apprehended illegal criminal alien from Honduras who is suspected in seven rapes in Miami. Local law enforcement arrested him for "lewd and lascivious" molestation in October 2002, after his visa had expired. But he wasn't removed from the country.

"Let them go" contributed to the rape of two nuns and the murder of one nun last year in Oregon. El Salvadoran illegal alien Maximiliano Silerio Esparza, who has been indicted in these crimes, had been caught and let go by the Border Patrol, despite his prior criminal record and an outstanding warrant for his arrest.

"Let them go" put Jamaican illegal alien Lee Malvo back on America's streets after police captured him in Washington State. This occurred just months before the Washington, D.C., sniper shootings of 2002, in which Malvo is a suspect.

"Let them go" incidents happened this past summer in the subcommittee chairman's district. In one incident, Indiana State Troopers stopped a van with 15 people in it - one of whom was a drug trafficker. ICE reportedly let them go. In another subcommittee member's district, local police in Greensburg, Pennsylvania, caught seven illegal aliens this past spring, but ICE told the police to release them.

These are only a handful of examples of the sorts of violators our state and local police officers encounter every day while on the beat, yet federal officials, for whatever reason, don't think they pose a threat to the domestic tranquility, the general welfare, or the blessings of liberty of American citizens.

The veteran immigration enforcer I mentioned earlier, and others with whom I have spoken, say there are many good, dedicated people in the immigration service. I believe that to be true. And there are valid reasons to explain why local INS offices - now Bureau of Immigration and Customs Enforcement - do not presently dispatch officers to respond to every call from a sheriff's deputy or state trooper who has illegal or criminal aliens in custody. But, again, it should be clear to everyone that "let them go" isn't good enough. More than terrorism threatens the homeland in these cases.

Immigration enforcers are outmanned. We have only 2,000 immigration investigators to cover the whole nation. Interior states may have just one or two ICE enforcement officers stationed there. For all the tough talk about securing our borders (which remain as leaky as a sieve), we have virtually abandoned interior enforcement. A witness from the General Accounting Office told this subcommittee on April 10 that we spend one-fifth the money on interior enforcement that goes to border enforcement.

These immigration enforcement officers who are charged with interior enforcement are trained investigators. They work diligently to crack alien smuggling rings, ID and benefits fraud schemes, and other immigration-related criminal enterprises. Understandably, it would be hard to do the good work that these dedicated officers do if they constantly were having to drop everything, drive a couple of hours to a county jail, take custody of routine immigration lawbreakers, drive back, and process them for removal. From a resource-allocation standpoint, this wouldn't be the best use of their time and talents. But, once again, while this situation is understandable, that does not justify "let them go" policies or mean that the situation should continue uncorrected in post-September 11 America.

The "let them go" culture of federal immigration authorities has real-world consequences. First, this response has won the federal immigration agency a low reputation in the minds of state and local police. It has developed and ensconced the perception of the INS (now ICE) as unwilling to cooperate, lax in its attitude toward enforcing immigration violations, and unresponsive. "Let them go" has left a bad taste in the mouth of state and local law enforcement. From the perspective of state and local police agencies, they are trying to do their duty and help enforce the very laws that are the federal agency's prime responsibility to enforce, so why would ICE not act responsibly and responsively in these cases where cooperation is key?

In addition to dismaying our nation's law officers, "let them go" sends a clear signal to the at least 8 million illegal aliens already in this country - as well as to the untold millions of would-be illegal aliens - that breaking our law is of no consequence. Our lack of enforcing many of our immigration laws leads illegal and criminal aliens to believe there is no down side for them; even if they get caught, chances are authorities will set them free and put them back on the streets of Amer-

ica. At worst, they will get a free trip home, from where they can quickly return, perhaps through one of the alien smuggling rings that have proliferated and operate unthreatened across our country. This is a dangerous message to send in a post-September 11 world.

We know that smuggling rings have become big business on the black market. We also know that among them are those who smuggle into the United States Middle Easterners. There have been reports of finding Islamic prayer rugs in the desert Southwest. Smuggler George Tajirian from Iraq is said to have snuck in more than 1,000 illegal aliens from the Middle East. And alien smugglers mix trafficking in persons with trafficking in narcotics. We know 18-wheeler trucks are becoming the vehicle of choice for these criminal enterprises. Foreign and ethnic gangs, such as the Salvadoran MS-13, are on the rise across America. All of this is abetted by a lack of taking basic illegal immigration violations seriously and giving federal cooperation and support to the state and local police who run across alien lawbreakers.

As a practical matter, there are several more aspects to the problem. State and local law officers may be unclear about their legal authority to enforce immigration laws. Regrettably, activist judges, INS officials, and the Clinton Justice Department have clouded the issue. But even the Clinton Justice Department acknowledged, "It is well-settled that state law enforcement officers are permitted to enforce federal statutes where such enforcement activities do not impair federal regulatory interests." James Madison, who knew a little bit about our Constitution and state sovereignty under it, said in *Federalist* 45 that states retain "a very extensive portion of active sovereignty."

As you know from a hearing earlier this year, some big cities have "sanctuary" policies that prohibit police cooperation with federal immigration authorities and coddle immigration lawbreakers. Such policies directly and flagrantly violate federal law. This subcommittee's hearing highlighted New York City's sanctuary policy and the unintended but not unforeseeable consequence of a gang rape by illegal immigrants, about half of whom had prior criminal records and should have been removed.

Another practical problem relates to information-sharing. The cop on the beat routinely uses the National Crime Information Center to check for outstanding warrants and fugitives. NCIC gives quick responses. It is ingrained in the modern police culture. But NCIC contains virtually no immigration violation records. The Justice Department has begun listing absconders - aliens under final order of removal - in NCIC, but is far from having all of the nearly 400,000 absconders in the system. And the immigration-violation database, housed in the DHS Law Enforcement Support Center, requires a secondary, slower, more onerous check - one from which an officer on the side of the highway on a traffic stop doesn't have time to wait for an answer.

At a hearing last week of the Senate Judiciary Immigration Subcommittee regarding information-sharing, several Senators expressed how vital it is that information about alien threats be available to state and local police officers. One Senator observed that having 8 to 10 million illegal aliens in our country is itself a homeland security issue. Yet, that hearing confirmed that records about such offenses as visa overstay and absconding under final order of removal still remain largely inaccessible to "the average state trooper."

A third practical problem has to do with resources. It takes resources to hold illegal and criminal aliens in detention, to process, and to transport them. The State Criminal Alien Assistance Program is woefully underfunded, dropping from \$585 million in FY 2002 to \$250 million in FY 2003. A strong argument can be made that a good portion of the resources that police and ICE need for enforcement should come from the lawbreakers themselves, as restitution to society. At present, things are backwards. State and local law enforcers and taxpayers incur the costs of enforcing immigration violations, while the lawbreakers suffer practically nothing. Immigration crime presently pays for the lawbreakers while the public bears the costs. The incentives should be the other way around. Immigrant criminals should incur the costs, and police who catch them (and taxpayers) should reap rewards.

One more thing bears mention. We know that holding immigrant lawbreakers in custody greatly improves the chances of their removal from our country - that is, if we "let them go," they almost uniformly don't comply with the law and disappear into the woodwork within our nation. The Department of Justice Inspector General in 1996 and 2003, as well as a 1998 GAO study, confirms that aliens who are detained get removed, while those not held in custody get away and stay here. The IG's report last February found that INS removed 92 percent of detained aliens, but only 13 percent of nondetained aliens in 2000 and 2001. Of INS's top priority, criminal aliens, just 35 percent of nondetained aliens were removed. A mere 3 percent

of nondetained aliens from terrorist-sponsoring countries and 6 percent of non-detained asylum seekers who received final orders of removal - including "potential terrorists" - were removed. These reports confirm the obvious.

#### THE SOLUTION

There is a solution to this dangerous predicament, and the CLEAR Act (H.R. 2671) goes to it exactly. Every day, nearly 700,000 state and local police officers patrol our nation's communities, our highways and streets. And every day, state and local police officers going about their normal duties encounter immigration violators.

Rather than putting immigration violators back on the streets of America, law enforcement authorities should apply the "broken windows" theory of policing to immigration enforcement. This is a critical component to securing the homeland.

"Broken windows" policing refers to a model developed by James Q. Wilson and George Kelling more than 20 years ago. It maintains that by enforcing laws against relatively minor offenses, more serious crimes will be reduced, as well. In other words, society sends a signal that it means business about law and order, and thus that it will not tolerate signs of disorder - property crimes such as breaking windows, graffiti, and shoplifting, "quality of life" offenses such as panhandling, prostitution, and public urination.

In the immigration context, alien smuggling rings, traffickers, immigration benefits frauds, counterfeit document producers and sellers, ID theft and fraud enterprises, and so forth are serious, more complex crimes and deserve the attention of ICE investigators. This is not even to mention the identification of terrorist cells and arrest of terrorist sleepers who use our immigration system to prosecute a war against the United States from within our borders. But it must be recognized and acknowledged that allowing the presence of at least 8 million illegal aliens in our midst - in fact, with some politicians even seeking to reward their illegality with green cards or in-state college tuition or valid driver's licenses - is the equivalent of tolerating graffiti, broken windows, and other so-called "minor" crimes in our cities.

One thing we know: "Broken windows" policing works. For example, research from the Manhattan Institute found that Mayor Rudy Giuliani's application of "broken windows" policing in New York City led to falling crime rates. "Broken-windows policing significantly and strongly associates with sharp reductions in violent crime; in fact, we estimate that it prevented at least 60,000 violent crimes in New York between 1989 and 1998," the Manhattan Institute reported in Winter 2002. Studies such as those by the National Bureau of Economic Research and the California Institute for County Government also confirm the validity of the "broken windows" model.

We have indications that the same approach, enhanced by using the vast number of state and local law enforcement personnel as force multipliers in immigration enforcement, would reduce the incidence of both "low-level" illegal immigration and the kinds of offenses ICE agents are investigating.

The National Security Entry-Exit Registration System, or NSEERS, went into effect this past year. It required nonimmigrant males from 25 terrorist-sponsoring nations to register with the INS. Lack of immigration enforcement had become so bad, many illegal aliens walked into INS offices to register expecting no adverse consequences. When INS actually detained these lawbreakers and word got around in immigrant communities, the next round of news reports told how many illegal aliens began to self-deport. Rather than register with NSEERS and risk being caught and removed, lawbreakers on their own fled to Canada or elsewhere outside this country. About 82,000 aliens registered with NSEERS; 13,000 were illegal aliens. An estimated 26,000 Pakistanis illegally resided in the United States in 2000; the Pakistani embassy has said 15,000 of its illegal aliens have left since September 11, 2001.

The link between run-of-the-mill illegal immigration and more serious immigration violations must be acknowledged. In many instances, sneaking across the border is a precursor crime. It is inexorably linked to illicitly holding a job in America, acquiring and using false documents or valid ID documents fraudulently obtained, aiding and abetting fellow illegal and criminal aliens, harboring fugitive illegal aliens, involvement with smuggling rings, and so forth. And most instances of illegal immigration - simply staying in this country - are continuing offenses.

Not enforcing the laws against the seemingly low-level immigration violators is the same as not going after the graffiti artist, the trespasser, the loiterer, the panhandler, the window breaker. It sends a message that they can get away with this lawbreaking, so they can get away with breaking other laws. Acting on this belief

is how the initial crime of illegally crossing our border becomes a precursor crime to larger offenses.

Columnist Rich Lowry wrote, "In the post-Sept. 11 environment, it is no longer possible to shrug your shoulders and ask, 'What harm can one illegal immigrant do?'" We have 8 million illegal immigrants within our borders, and that number grows by upwards of a half-million each year. It is extremely difficult to pick out the few terrorists from such a huge crowd. But by implication, it should be easier to identify the millions of people who have committed precursor crimes of the immigration sort.

Taking advantage of the vast ranks of local and state police officers and the law enforcement duties they are already doing every day makes common sense. Border and Transportation Security Undersecretary Asa Hutchinson acknowledged at an April 10, 2003, hearing of this subcommittee that routine traffic stops and other routine law enforcement encounters present good opportunities to capture illegal aliens. These officers would not be taking on extra duties; rather, the federal government would simply take advantage of current, daily encounters as these officers go about their duty when they happen to come into contact with an illegal alien. This would be maximizing the available human resources to help enforce the laws already on the books and to hold the lawbreakers accountable.

To do so will require clarifying legal authority. It will require two-way information sharing. It will require additional resources. It will require creative ways to maximize existing resources, such as use of new technology to conduct removal proceedings across long distances. It will require deriving resources from the lawbreakers; that is, immigration lawbreakers must be held accountable. And it will require flexibility so localities can come up with the most practicable means of detaining, transporting, and handing federal authorities custody of illegal criminal aliens.

#### THE CLEAR ACT

H.R. 2671 contains the solution that would close the gap. The bill would do so in exactly the ways just outlined and suggested in my Center for Immigration Studies report. Whenever state or local police come into contact with illegal or criminal aliens as the officers carry out their regular duties, the response from the federal side would no longer be "let them go." This is the glaring problem. The CLEAR Act would fix it by providing practical means for federal and state or local law enforcement to work together in the apprehension, detention, transportation, processing, and removal of immigration lawbreakers.

First, the CLEAR Act clarifies the legal authority question in federal law. It encourages states to do so, too. The bill's approach does this in a way that respects the Founding Fathers' principle of federalism. States and localities retain the freedom to decide the extent of their law enforcement officers' involvement in enforcing immigration violations. H.R. 2671 contains no unfunded federal mandates. It merely empowers those states and localities that wish to have their police officers on the front lines of homeland security.

Second, H.R. 2671 enhances two-way information sharing. The saying is that "information is power," and two-way communication of intelligence is vital to any effort's success, from the battlefield to counterterrorism to crime fighting. This legislation puts information about immigration violators into the hands of the cop on the beat in the most practical way possible, through the most established tool of information sharing in law enforcement, NCIC. It provides a system for state and local jurisdictions to collect and send information to the Justice Department about their encounters with immigration lawbreakers. And the bill provides additional resources to help offset the cost.

This is ground-level intelligence that will yield a wealth of valuable data. From it can be gleaned patterns and trends in illegal immigration and specific information about individual immigration lawbreakers. With such two-way information sharing, law enforcement at all levels can make more informed improvements in strategy and tactics, coordination and implementation. With this kind of data, those aliens who threaten our homeland's security may be able to run, but they cannot hide.

Third, the CLEAR Act provides additional resources to bring "broken windows" policing to immigration violations. It does this in a very responsible, practical way. It doesn't look primarily to additional federal spending, in terms of very heavily tapping the federal treasury. It does increase the SCAAP authorization and creates a new grant program, but at realistic levels. It looks as well to the ill-gotten gains of immigration lawbreakers as a source of revenue. This follows the model we use with respect to other crimes, where the assets of lawbreakers help fund law enforcement efforts, federal and state and local.

The bill provides financial incentives to the states and localities that choose to become more involved in this aspect of securing the homeland. It contemplates applying resources to all the major elements of the process, from apprehension to removal from the country. These include police training, detention, transportation, administrative or criminal proceedings, exchange of custody, and removal. And H.R. 2671 builds on existing resources, maximizing their use. For instance, the bill makes the existing Institutional Removal Program and Internet training programs more widely accessible to state and local law enforcement.

Importantly, H.R. 2671 allows for the flexibility of the states to be “the laboratories of democracy” in this area. States and localities would be the drivers in creatively solving the challenges of detention, transportation, and so forth. That is, the CLEAR Act refrains from dictating a “one-size-fits-all,” Washington “solution.” Rather, states and localities would determine the best way to address each specific thing. For example, one city may be close to an ICE office, so the best way to hand over custody of illegal criminal aliens to federal authorities would be for ICE to establish a circuit-riding system. The local police and county sheriff in that area would know that every Tuesday morning at 11, the ICE van would come to the courthouse square for alien pickup. In another locality, it may make more sense for the county sheriff’s department to contract with the federal government to transport the aliens itself. In another place, perhaps contracting with a private security firm to transport apprehended aliens to a federal detention facility would work best. CLEAR provides such practicality and flexibility.

Also of importance, H.R. 2671 includes measures to end federal noncooperation and the nonresponse of “let them go.” Nothing works as well to rectify a problem as sunlight and accountability. These are the principles the CLEAR Act applies. State or local law enforcement agencies could hold uncooperative or unresponsive federal agencies accountable through a limited administrative appeals process.

Finally, H.R. 2671 would ensure that the civil rights of aliens are safeguarded and that jail facilities used for detention meet federal standards. The bill strikes the right balance to ensure that police agencies do not take license, but remain accountable. It preserves police officers’ discretion with respect to crime victims, witnesses, and tipsters. It only involves police officers in immigration law enforcement to the extent they encounter illegal and criminal aliens in the course of the officers’ normal duties.

#### THE BENEFITS

All told, the CLEAR Act would have a deterrent effect on illegal immigration. By its force-multiplication through state and local police, it increases the chances that an immigration lawbreaker will get caught, that he will be held in custody, that he will face being identified through fingerprinting and the creation of a record, that he will forcibly leave the country, that he will leave behind his ill-gotten gains acquired from having broken our nation’s laws, and that if he re-enters the United States then he will be recaptured and suffer even greater consequences.

By holding lawbreakers accountable, individual immigration violators will get the message that America is no longer turning a blind eye to their offenses. That message also goes out to would-be lawbreakers. Such “broken windows” policing can be expected to reduce the number of new illegal immigrants, lead at least some current illegal immigrants to self-deport, and have the spillover effect of curbing some of the bigger immigration crimes. It starts to “drain the swamp,” as in the Weed and Seed program. These beneficial effects would occur at a manageable rate. Thus, there would not be the severe impact of mass deportations or huge raids. Suddenly burdening the law enforcement and criminal justice and immigration enforcement systems with great numbers of people - much like the deleterious effect on the immigration backlogs of amnesties such as the LIFE Act’s 245(i) extension or the gross expansion of legal immigration as through the 1990 Immigration Act’s multiplication of legal immigration categories and quotas - would be counterproductive, overwhelm the system, and possibly cause the economy some harm.

This bill’s approach would change the dynamics of the war on crime and terrorism. It would change the mindset of no fear of capture or punishment among immigration lawbreakers. It would restore confidence in federal immigration agencies. It would empower state and local police to finish the job, rather than saddle them with the demoralizing knowledge that they are putting lawbreakers right back on the street.

This common-sense solution of law enforcement cooperation has been recommended by the National Taxpayers Union Foundation. In its recent report *Borderline Infraction: Unsafe Borders, Complacent Government?*, NTU identified the need for the Department of Homeland Security immigration agencies to “collaborate

with law enforcement on the local, state, and federal levels that are monitoring or assisting in the apprehension of illegal immigrants” and “work more aggressively to root out fraudulent benefit payments to illegal immigrants.” NTU notes how such reforms would save taxpayers billions of dollars.

The American public overwhelmingly supports such an approach. A RoperASW poll this past spring found 85 percent in support of “requiring state and local government agencies, and law enforcement agencies, to apprehend and turn over to the INS illegal immigrants with whom they come in contact.” Sixty-two percent of respondents “strongly” agreed. Eighty-three percent support “mandatory detention and forfeiture of property” for illegal aliens. Seventy percent favor mandatory prison sentences, in addition to asset forfeiture and removal, for immigration law violations.

Encouraging and enabling federal cooperation to those state and local police who are already trying to do their part in immigration enforcement would vastly help to secure our homeland. What would our nation have been spared had we applied “broken windows” enforcement to immigration violations prior to September 11? Of course, we will never know. However, the fact that three of the terrorists - Hani Hanjour, Ziad Jarrah, and Mohammed Atta - were stopped by state or local police prior to that fateful date chillingly illustrates that opportunity exists for state and local law enforcement to play a vital role on this front. The stakes are too high for America’s well-being not to pursue this avenue.

In conclusion, I believe H.R. 2671, the CLEAR Act, would be the most appropriate next step toward securing our borders, tackling illegal immigration, and restoring the rule of law in an area in which we have far too long been derelict. It addresses the problem areas relating to authority, information, and resources. And it does so in a very practicable, effective manner. Our nation would benefit tremendously from the provisions of the CLEAR Act.

Mr. Chairman, I am submitting along with this testimony my CIS backgrounder for inclusion in the record. It elaborates on many topics I have merely highlighted here. I am now pleased to take questions from the subcommittee. Thank you.

Mr. HOSTETTLER. Thank you, Dr. Edwards.  
Mayor Quan.

#### **STATEMENT OF GORDON QUAN, MAYOR PRO TEM, HOUSTON, TEXAS**

Mr. QUAN. Thank you, Chairman Hostettler and Ranking Member Sheila Jackson Lee and Members of the House Subcommittee on Immigration, Border Security, and Claims, for this opportunity to speak with you today. My name is Gordon Quan. I’m Mayor Pro Tem and At-Large Council Member from the city of Houston. I’m pleased to testify today on behalf of the National League of Cities in opposition to H.R. 2671.

I’m here to speak on four issues: the issue of preemption, which was mentioned previously; unfunded mandates; community policing; and racial profiling. As the Committee considers new ways to improve the Nation’s security, I ask that it does so without diverting central Federal responsibilities onto local governments.

Like many major cities in the United States, Houston has seen a dramatic demographic transformation in the past 20 years. Houston is roughly one-third Anglo, one-third Hispanic, and one-third black/Asian. With 77 consulates in our city, we have the third highest number of foreign governments represent. The port of Houston ranks as the number one port in foreign tonnage. We are truly an international city.

Since September 11th, local law enforcement across the Nation has improved the security of our cities. In my city of Houston, we’ve spent approximately \$14 million more in securing the city since 9/11. The mayor’s office and the Houston Police Department estimate that we’re spending an additional \$584,000 per month for security of our city’s water plants, airports, extra helicopter flights,

among other things. This figure does not include the added costs for securing our City Hall and such soft targets as local temples and synagogues.

NLC's policy on immigration and the role of local government is clear. The local police have a responsibility to cooperate with the Federal Government to apprehend specific persons identified as having committed a crime and violated U.S. immigration laws and who have been located by the Federal Government. However, local personnel cannot be conscripted into Federal service because the Federal Government has decided not to fund and staff its immigration enforcement agencies to meet the demand. This type of action can divert local personnel from their primary duties and constitute a cost shift under our local government.

Let me go to the first issue of preemption, which was discussed previously. Section 102 would preempt State and local laws that bar their law enforcement officers from assuming the Federal responsibility of enforcing Federal immigration laws. This section would also have the effect of preempting two State laws—Alaska and Oregon—and the resolutions and measures of numerous municipalities, including the city of Houston.

In June 1992, the city adopted the Police Department General Order 500-5, which holds that undocumented immigration status is not in and of itself a matter for local police action and entry without inspection is not to be treated as an ongoing offense. The order prohibits police officers from stopping or apprehending individuals solely on the belief that they are in the country illegally. This order has served the people and the law enforcement community of Houston, Texas, well since its adoption.

Houston, like so many cities within the country, has routinely assisted the Federal Government by apprehending, housing, feeding non-documented criminal suspects in our jails until the Bureau of Immigration dispatches officers to retrieve these suspects. More often than not, as was mentioned earlier, SCAAP reimbursement is less than the financial burden assumed by the local police departments. In essence, 102, section 102 is Congress' way of telling local governments that they must assume the responsibilities of the Federal immigration agency or risk not getting reimbursed for the services that they have rendered.

No less a person than the Governor of Florida, Jeb Bush, has said, "I would have a lot of trepidation if every police officer was to be—was going to be a sworn INS officer, and our duties end up with local law enforcement becoming the immigration cops of the country."

Unfunded mandate. Despite our trying times, the city of Houston and other municipalities have already assumed much of the financial burden for homeland security while they wait for first responder funds to trickle down to the local level. Section 109 of the CLEAR Act would require the Federal Government to pay only 50 percent—up to 50 percent of the training costs of State and local elected officials to enforce our Federal immigration laws. In addition, there is no guarantee that Congress will ever fully fund the \$1 billion mentioned in section 106, authorized to State and local police agencies to obtain equipment, technology, and other administrative support.



It's unfair to demand that under the threat of preemption that local governments undertake the Federal Government's responsibilities. It's also unreasonable to mandate such responsibilities upon local governments without full financial support. As was mentioned earlier, letters have been received to this Committee from the Americans for Tax Reform, the American Association of Counties, the American Conservative Union, all supporting our position.

The effects of community policing and racial profiling is the last thing I'd like to talk about. Police departments across the country have raised concern that efforts to force local officials to enforce Federal laws would damage successful community policing initiatives and inadvertently encourage racial profiling. I know that has been alluded to previously, but I am concerned that the effects of the CLEAR Act, if enacted, would have these effects.

As a local elected official and a lawyer practicing immigration law for over 26 years, I know too well that communication, visibility, and trust are the foundation of effective community policing. Victims of crime must know that they can call us without threat that we will detain them or deport them simply because of their immigration status.

Our Government has the important task of stopping credible threats of terrorism. However, the CLEAR Act may hinder the fight against terrorism if members of the immigrant communities cannot trust the police officers who serve them.

In closing, I respectfully ask that this Subcommittee fully weigh my comments as an elected official and immigration law expert. I further ask that you take into account the unmanageable burden the CLEAR Act would place on local law enforcement. Specifically consider the burden in costs, personnel, and the potentially devastating effect on community policing programs. The American public wants to find effective tools to combat terrorism. I submit the most effective tools are not preemption, unfunded mandates, deteriorating police—community policing, and racial profiling but, rather, effective tools to fight terrorism are to improve coordination, planning, technology, training, and funding.

Thank you very much.

[The prepared statement of Mr. Quan follows:]

#### PREPARED STATEMENT OF GORDON QUAN

Thank you, Chairman John Hostettler (R-IN), Ranking Member Sheila Jackson Lee (D-TX), and members of the House Subcommittee on Immigration, Border Security, and Claims for the opportunity to speak with you today. I am Gordon Quan, Mayor Pro Tem and At Large Council Member from Houston, Texas. I am pleased to testify on behalf of the National League of Cities on H.R. 2671, the "Clear Law Enforcement for Criminal Alien Removal Act of 2003".

The National League of Cities (NLC) is the nation's oldest and largest association representing municipal interests in Washington, D.C. NLC represents more than 16,000 cities of all sizes - from our largest member New York City with a population of 8 million to our smallest member De Graff, Minnesota with a population of 133. As the representative of the nation's local leaders, NLC has a vital interest in clarifying the roles and responsibilities for local law enforcement in the enforcement of federal immigration law and stopping terrorisms.

I am prepared to testify before you as the president of the Asian Pacific American Municipal Officials of the National League of Cities as well as an advisor to the Houston Mayor, Lee P. Brown's Office for Immigration and Refugee Affairs. I am certified by the Texas Board of Legal Certification in Immigration and Nationality Law and have practiced in this area of law for the past 26 years.

Like many major cities across America, Houston has seen a dramatic demographic transformation in the past twenty years. No one ethnic group comprises the majority of the population in Houston. We have benefited greatly from immigrants moving to our city. Houston is roughly one-third Anglo, one-third Hispanic and the remaining third Black and Asian. With 77 consulates in Houston, we have the third largest consular corps in the U.S. The Port of Houston ranks number one in foreign tonnage in the U.S. We are truly an international city.

Since September 11, local law enforcement across the nation have improved the security of their cities. In my city of Houston, Texas we have significantly assumed responsibilities for counterterrorism in partnership with federal law enforcement agencies revamped emergency preparedness plans, provided airport security, responded to anthrax threats and incidents, purchased new equipment and shouldered significant costs in overtime pay.

Since September 11, the Mayor's office and Houston Police Department estimate that we are spending an extra \$584,000 per month for security at the city's water plants, airports, extra helicopter flights, among others. That figure does not include the added cost for security at City Hall and "soft targets" such as local temples and synagogues. In sum, the City of Houston has spent \$14 million more on securing the city since September 11, 2001.

As this committee considers new ways to improve the nation's security, I ask that it does so without diverting essential federal responsibilities onto local governments. I am specifically referring to H.R. 2671, the Clear Law Enforcement for Criminal Alien Removal Act of 2003 (The CLEAR Act). The bill, authored by Rep. Norwood (R-GA), would mandate that state and local law enforcement enforce federal immigration laws or risk the reimbursement from the State Criminal Alien Assistant Program (SCAAP).

NLC's policy on immigration and the role of local government is clear. Specifically, it reads:

With regard to the enforcement of federal immigration laws, local police have a responsibility to cooperate with the federal government to apprehend specific persons identified as having committed a crime and violated US immigration laws and who have been located by the federal government. However, local police should not be responsible for reporting or retaining the custody of those persons they have detained or charged.

Local personnel cannot be conscripted into federal service because the federal government has decided not to fund and staff its immigration enforcement agencies to meet demand. This type of action can divert local personnel from their primary duties and constitute a cost shift onto local governments. National Municipal Policy and Resolution, Section § 4.06(D)(5)(A)(ii)

Simply put, the CLEAR Act, if enacted, would be bad policy on many grounds. I am here to speak on four issues: preemption, unfunded mandate, community policing, and racial profiling.

#### THE PREEMPTION ISSUE:

If the Senate were to adopt the CLEAR Act it would blatantly preempt state and local laws. Specifically, Section 102 of H.R. 2671 would require state and local governments to pass laws authorizing their law enforcement officers to enforce federal immigration laws or risk losing reimbursement from the federal government for costs related to the incarceration of illegal immigrants. Put simply, Section 102 would preempt state and local laws that bar their law enforcement officers from assuming the federal responsibility of enforcing federal immigration laws. This section would have the effect of preempting two state laws (Alaska and Oregon), and the resolutions and measures of numerous municipalities including the city of Houston.

In June 1992, the City of Houston adopted Police Department General Order No. 500-5 which holds that undocumented immigration status is not in itself a matter for local police action and entry without inspection is not to be treated as an ongoing offense. The order also prohibits police officers from stopping or apprehending individuals solely on the belief that they are in the country illegally. This Order has served the people and the law enforcement community of Houston, TX well since its adoption.

Houston, as with many cities across the nation, has routinely assisted the federal government by apprehending, housing, and feeding non-documented criminal suspects in our city jails until the Bureau of Immigration dispatches its officers to retrieve the suspects. Local governments have done so despite the costs associated with these services. Indeed, members of this Subcommittee are all too aware of the annual battle local governments undergo to get SCAAP reimbursement for the costs incurred by local law enforcement for assisting the Bureau of Immigration. More

often than not, the SCAAP reimbursement is less than the financial burden assumed by the local police departments.

Why then would Congress consider a bill that would punish the very sector of law enforcement that has stepped in to fulfill the responsibility of the federal immigration bureau? Section 102's threat to withhold SCAAP reimbursement to local governments is a blunt force of extortion. In essence, Section 102 is Congress' way of telling local governments that they must assume the responsibilities of the federal immigration agency or risk not getting reimbursed for the services they have rendered.

On behalf of the National League of Cities, "No thank you." Congress should not preempt local governments simply because the federal government has failed or is unwilling to adequately staff and fund its federal enforcement agencies. Local governments will continue to cooperate with the federal government in its endeavor to stop crime. However, before Congress usurps local authority, it should first consider the precedent, the policy implications, and the cost of such a drastic measure.

Members of the Subcommittee, the events of September 11th and the events thereafter have clearly demonstrated that the men and women in blue are partners in fighting terrorism. Therefore, on behalf of these men and women, I ask that you gravely reconsider any attempt to preempt local law. Preemption would unduly burden already overworked police forces around the nation.

#### UNFUNDED MANDATE

Protecting the homeland cost billions of dollars.. Local governments have already assumed much of the fiscal burden while they wait for first-responder funds to trickle down to the local level. As a Mayor Pro Tem and an At-Large Councilmember from Houston, I can tell you it is extremely difficult to protect essential policing services in these fiscal trying times. NLC and the City of Houston would therefore welcome your support for full funding for first-responder grant programs, the Community Oriented Policing Services (COPS) program, and the Local Law Enforcement Block Grant. NLC, however, unequivocally opposes yet another Congressional effort to saddle local governments with an unfunded mandate.

Chiefly, I am perturbed by Section 109 of the CLEAR Act, which would require the federal government to pay only up to 50% of the cost to train state and locally elected officials to enforce federal immigration laws. In addition, there is no guarantee that Congress will ever fully appropriate the \$1 billion Section 106 authorizes for state and local police agencies to obtain equipment, technology, and other administrative support. It is a leap, indeed, to assume that \$1 billion is a sufficient authorization figure.

On behalf of the NLC, I respectfully ask, pursuant to Title I of the Unfunded Mandate Reform Act (UMRA), that members of this Subcommittee ask the Congressional Budget Office to prepare a mandate statement as it relates to the intergovernmental mandate issued in the bill. UMRA was passed to ensure that "Congress had information about the costs of mandates before it decided whether to impose them and encourage the federal government to provide funding to cover the costs of intergovernmental mandates."

Additionally, NLC policy specifically calls for the Congress to "explicitly express its intent to preempt, and accompany any such proposals with a timely intergovernmental analysis, including estimated costs." (National Municipal Policy § 1.06(J))

The CLEAR Act, as proposed, presses local governments and their law enforcement officials to perform additional federal immigration duties under the threat of preemption and with no guarantee of full funding. Members of the Subcommittee, if Congress is ready to improve the security of this nation by strengthening its immigration enforcement, then it must be willing to properly fund the appropriate personnel and programs. As stated earlier, local police have a responsibility to cooperate with the federal government. However, local police cannot be conscripted into federal service because the federal government has decided not to fund and staff its immigration enforcement agencies to meet demand.

To shift the responsibility of immigration law enforcement to local governments without the necessary funds undermines the integrity of those championing the bill. The cost for police overtime, improved planning and coordination, and security enhancements have already been assumed by local governments. It is unfair to demand, under the threat of preemption, that local governments to undertake the federal government's responsibilities. It is also unreasonable to mandate such responsibilities upon local governments without full fiscal support.

## EFFECT ON COMMUNITY POLICING AND RACIAL PROFILING

Police departments across the nation have raised concerns that efforts to force local officers to enforce federal immigration laws would damage successful community policing initiatives and inadvertently encourage racial profiling. I, too, am concerned with the effect of the CLEAR Act, if enacted. As a local elected official and immigration lawyer with over 26 years of experience, I know too well that communication, visibility, and trust are the foundation of effective community policing. Victims of crime must know that they can call us without the threat that they will be detained or deported simply because of their immigration status.

NLC's policy specifically states, "Community policing must be seen as part of the basics in law enforcement. There must be a constant commitment to assure that justice is dispensed equally and not based on race, gender, religion, national origin, sexual orientation, disabilities, education, or economic status of the victims or perpetrators." (National Municipal Policy § 6.01(B)) In short, NLC supports community policing and opposes profiling.

Forcing local law enforcement to be the "eyes and ears" of every civil immigration violation, would demoralize the very members in the community we are sworn to protect. The job of police officers is tough. I ask you, members of the Subcommittee, not to further complicate an already delicate situation. The State of Texas and my city of Houston are truly reflective of the diversity we praise in this nation. However, it would be a grave error to mandate that local police officers must now round up and detain those suspected of civil immigration violation.

Our government has the important task of stopping credible threats of terrorism. However, rounding up individuals standing based on their suspected citizenship status would undermine the credibility of the police departments and do little to prevent another tragedy like September 11th. In fact, H.R. 2671 may hinder the fight against terrorism if members of the immigrant community cannot trust the police officers who serve them. The CLEAR Act would render our communities to be less safe and our country no more secure.

In closing, I respectfully ask that this subcommittee fully weigh my comments as an elected local and immigration legal expert. I further ask that you take into account the unmanageable burden the CLEAR Act would place on local law enforcement. Specifically, consider the burden in cost, personnel, and the potentially devastating effect on community policing programs.

The American public wants us to find effective tools to combat terrorism. I submit that the most effective tools are not preemption, unfunded mandates, deteriorated community policing, and racial profiling; rather, our most effective tools to fight terrorism are improved coordination, planning, technology, training, and funding.

Thank you.

Mr. HOSTETTLER. Thank you, Mayor.

The Subcommittee will now move to questions, and, Mayor Quan, I have a question for you with regard to the general order that you mentioned in your testimony of the Houston Police Department, General Order No. 500-5. That order states, in part, "officers shall not make inquiries as to the citizenship status of any person, nor will officers detain or arrest persons solely on the belief that they are in this country illegally. Officers will contact the Immigration and Naturalization Service regarding a person only if that person is arrested on a separate criminal charge other than a Class C misdemeanor and the officer knows that the prisoner is an illegal alien."

In your testimony, you stated that the order prohibits officers from stopping or apprehending individuals solely on the behalf—on the belief that they are in the country illegally. Did you know that the order also does not allow for even inquiries as to the citizenship even outside of the—

Mr. QUAN. That's correct, yes.

Mr. HOSTETTLER. My question is: If an officer cannot ask an alien his or her status, how would the officer determine that the alien is here illegally?

Mr. QUAN. Again, we're not stopping people just because of immigration status, so why are we making that inquiry, Mr. Chairman? I mean, your—

Mr. HOSTETTLER. If I can ask—if I can ask you a question, my question is: Why does an officer ask the status, the citizenship status other than wanting to know if they are in the country legally or illegally?

Mr. QUAN. We don't ask the status. That's the—

Mr. HOSTETTLER. That's what I'm saying. That's what I'm saying. But it says here the officer knows that the prisoner is an illegal alien. So you say—you say that they cannot ask at all the status of an individual?

Mr. QUAN. It is not our policy to inquire about immigration status.

Mr. HOSTETTLER. Okay. The Immigration and Nationality—well, it's not only not your—you prohibit it by the order.

Mr. QUAN. That's what the order says.

Mr. HOSTETTLER. Okay. The Immigration and Nationality Act states, "Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit or in any way restrict any government entity or official from sending to or receiving from the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual."

Now, as a result of your last response, by preventing—prohibiting Houston police officers from contacting the INS about certain aliens, doesn't the general order violate the Federal Code?

Mr. QUAN. What you just read was that we do not prohibit officers from conveying that information to the Federal Government, and which we do not prevent that from happening. Our line of inquiry is that is not our area of jurisdiction. We do not have our officers make those questions unless—if that's solely the reason why we're stopping the individual.

Mr. HOSTETTLER. So you do not believe that that's in any way restricting the INS from receiving information about the status of an individual.

Mr. QUAN. We cooperate with the INS very—ICE, as it's called now, very closely. We have an Office of Immigration and Refugee Affairs. We have representatives from the immigration authorities serve on that committee to work on policies together with our city to make sure that we can work cooperatively.

Mr. HOSTETTLER. Mr. Quan, Walter Sorto is an alien who apparently entered the United States illegally in May 1995. The Houston Chronicle has reported that he has been charged with the murder, for the 2002 rapes and slayings of three women in Houston. According to information that the Subcommittee has received, Sorto was arrested by the Houston Police Department in June 1999 for unlawfully carrying a weapon. On October 2000, Sorto was arrested by the Houston Police Department for aggravated robbery for which he was convicted in December 2000. Both of those arrests occurred more than a year before the slayings of the three women. The Houston Chronicle also reports that Sorto was ticketed by Houston police for several times—for traffic violations before the three slayings.

Now, Mr. Sorto's status and robbery conviction would have rendered him—rendered him removable. Do you know of Walter Sorto—

Mr. QUAN. I don't know Walter Sorto, but the policy, as I understand it practicing immigration law for so many years, is that a detainer will be placed on an individual who was not born in the United States for immigration to make a determination as to whether the person is legally or illegally in the United States.

Mr. HOSTETTLER. Do you know whether the Houston police ever referred him to the INS?

Mr. QUAN. I'm not familiar with that case, sir.

Mr. HOSTETTLER. If not, can you check with the Houston police and—

Mr. QUAN. I'll be glad to do that.

Mr. HOSTETTLER. Do you know whether the general order that we referred to earlier may have contributed to a decision not to refer him to the INS?

Mr. QUAN. Not at all, sir. A person who committed those type of offenses would, in fact, be placed in the Harris County Jail, a detainer would be placed on them for immigration to come out and do an investigation to see if they have a lawful status to be here. That's the normal policy.

Mr. HOSTETTLER. So the general order would not have—would not have stopped—but you said it's not—

Mr. QUAN. If it's above a Class C.

Mr. HOSTETTLER. No, it says "shall not make any inquiries as to citizenship status of any person."

Mr. QUAN. Okay.

Mr. HOSTETTLER. That's regardless of—but it says officers will contact the INS regarding a person only if the officer knows that the prisoner is an illegal alien. But if they can't ask the status, how will they know that an individual who has committed a criminal act is an illegal alien?

Mr. QUAN. Again, I think if you look at the order, it deals with Class C and not making that inquiry clearly only on that being the sole basis for the stop.

Mr. HOSTETTLER. But, I mean, the order is very clear. The orders says, "Officers will contact the Immigration and Naturalization Service regarding a person only if the officer knows that the prisoner is an illegal alien. Officers shall not make inquiries as to the citizenship status of any person solely on the belief"—so what I'm asking is—

Mr. BERMAN. Finish that sentence: "...solely on the belief" what?

Mr. HOSTETTLER. "...solely on the belief that they are in this country illegally."

Mr. QUAN. Right.

Mr. HOSTETTLER. Yes.

Mr. QUAN. If it's solely on the belief they're in the country illegally, then they're not to make the arrest on that basis.

Mr. HOSTETTLER. But the question—it disallows the question, because it says later, "the officer knows that the prisoner is an illegal alien." You don't—you do not allow the question in the first part. There can be an arrest that's made on a criminal act, but that part

of the order says the officer knows that the prisoner is an illegal alien.

Mr. QUAN. Again, Mr. Chairman, our policy has been to arrest people who have committed criminal offenses, and then if there's a question of their nationality——

Mr. HOSTETTLER. And then they can ask—they can ask status at that point, is what you're saying.

Mr. QUAN. Yes.

Mr. HOSTETTLER. They do. So they asked the status of Mr. Sorto?

Mr. QUAN. At that point, after they arrested.

Mr. HOSTETTLER. Okay. So there is——

Mr. QUAN. And then a detainer can be placed on them for immigration to come out and do a more thorough investigation because we're not equipped to do a more thorough investigation.

Mr. HOSTETTLER. Okay. So it's highly likely that Mr. Sorto, because of the robbery, was asked of his status.

Mr. QUAN. I would assume so, yes.

Mr. HOSTETTLER. Okay. Thank you. The Committee will be looking forward to that part of the investigation.

Mr. QUAN. Okay.

Mr. HOSTETTLER. The Chair recognizes the gentlelady from Texas, Ms. Jackson Lee, for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman, and thank the witnesses. And might I again, as a moment of personal privilege, thank Mayor Pro Tem Gordon Quan for the sacrifice that you made to be here today. I know there were legislative matters before the City Council, and I do thank you for your presence.

Might I also say that, Chairman, I know in his absence—I'd like not to mention it, but I know that he brought to the attention of this Committee the Immigrant Workers Freedom Ride. And might I say that I was very proud to welcome those from Houston who have come in on the issue of immigrant justice and immigrant rights, which I think sometimes we violate or at least ignore the fact, again, that I always say often that immigration does not equate to terrorism. And what I would like to see occur is that we spend a lot more of our resources dealing with the crux of the problem, which is, one, making sure that now BICE has more resources, more training, more staff, and that they can be able—that they would be able to effectively their job, because I do believe that we do have a consensus on the question of the flow of illegal immigration. I think we have a disagreement on what we do with the existing immigrants that are in this country that are paying taxes and working. And how do we translate that into a productive investment in this country?

I think in the city of Houston we have managed to strike a balance, and that is to understand the balance of us—immigrants who are working in the community with responsibilities that they have, the balance of understanding that most immigrants come to this country to seek better opportunities, and that part of the delay in achieving citizenship is because of the maze of immigration laws.

And so I'm curious. Let me pose questions again to Mayor Pro Tem Quan on this issue. Do you see anything—having reviewed this bill and representing the National League of Cities, do you see anywhere in this bill where you would have sufficient funds coming

from the Federal Government that would supplement already tight budgets in the local governments?

Mr. QUAN. Thank you for the question, Congresswoman. I don't see that at all. I know it talks about the forfeiture—the asset forfeiture provision which would allow monies to be recouped.

But let me just say that we have approximately 100,000 abandoned lots in Houston, and I know you may say, well, what does that have to do with anything? But it takes over a year and a half before we can get any legal proceedings to go on a forfeiture of those lots just to even put them on our tax roll. The legal proceedings here I think are so complicated as to who owns property, to help make up that.

For instance, I have one couple—and I'm sorry to be long on this—from Pakistan. The husband filed for asylum; he was denied. The wife filed; she was granted. While we were trying to process the paperwork to get the wife's asylum shown to the husband—and that's all you need to do—immigration took so long, they deported the husband.

So whose property then would be foreclosed on? I mean, the wife is legal, the husband is not. It's a community property State. There's a lot of complications in the real world in trying to enact such legislation.

Then the one-third that would come from fees to help supplement the police, as you know, the waiting lines at almost every immigration office or, I guess, CIS now, Citizenship and Immigration Service Office, is years backlogged. To take more funding away from that I think exasperates the problem of people trying to get their paperwork done legally.

As the district attorney talked about, that happy moment of people becoming citizens and going through the process, it's been dragged on longer and longer every year because of inadequate funding to help people attain those dreams.

Ms. JACKSON LEE. Let me—thank you very much. Let me post a question to Mr.—is it Kobach?

Mr. KOBACH. Kobach.

Ms. JACKSON LEE. Kobach. Mr. Kobach, on this litany of requirements—and I think you were making a point as I was listening to your testimony that there should be some revision of the legislation because—don't bestow authorization because you believe the local authorities have authorization, if you could clarify that point. And then at the same time, could you step into the quagmire of racial profiling, which invariably is going to come if you're talking about a stopping on the street? Because the police officer has to make an immediate assessment as to whether or not the very existence of this driver connotes the criminal activity rather than making the complete arrest and knowing that you have someone who's been engaged in a criminal act.

So I'm concerned that even though it may be clear in this legislation, there's all kinds of opportunities for this to be, if you will, jaded, faded, and not understood on the local level. And then what do you have?

Let me finish my questioning to suggest that we are much better off if we provide the resources for trained professionals who happen to know better than local officials Federal law, and as well can be



a part of the Homeland Security Department, which, if you will, by chain of command, local law enforcement are not. They are our partners, but they're not part of the Department of Homeland Security. There is a conflict with this legislation as is implemented to now put a wide net to include first responders in local communities as being knowledgeable in immigration law.

Mr. KOBACH. Okay. I'll cover those questions in order.

First of all, you asked a question about section—my comments on section 101, and section 101 is the affirmation of the inherent arrest authority provision. And as I understand section 101, it is—it is intended to recognize the legal landscape as it currently exists. And my only suggestion there was that the Committee avoid the word “authorize” because “authorize” implies delegated authority and that might imply that there has been a congressional act that has created this authority, which would not correctly describe the legal landscape.

As to—

Ms. JACKSON LEE. The legal landscape is described how, in your mind?

Mr. KOBACH. Well, no, in the long—longstanding and widespread recognition that State and local police have always had the authority to make immigration arrests, and then—if they wish, and then turn those individuals over to the INS or to ICE.

Ms. JACKSON LEE. But you're reaffirming that the discretion or the authority is there and that local law officials and local communities can make these arrests in certain instances, particularly in civil matters.

Mr. KOBACH. Yes, in civil matters, particularly. I'm just—that was merely a point of clarification of the wording that I think the Committee might want to consider.

But as far as your second question about racial profiling, you know, as a former city councilman myself, I can certainly report that most cities that I am aware of have extensive training in place for racial profiling, and those policies are also in place, and they take it very seriously. And I think the assertion that—you know, that Federal—that Federal training is inherently superior or that Federal officers are going to be inherently better trained in this very sensitive area, it illustrates the reason why Washington, D.C., is so well loved around the rest of the country.

I mean, I think local—State and local officers wear the badge proudly and take their job very seriously. And I think, furthermore, they actually have more experience. The nature of State and local policing is that you have many more law enforcement encounters per day in the case of issuing traffic tickets, or whatever the beat of the officer is, than the average FBI agent has or the average DEA agent has, or even the average ICE agent. And I think that experience of actually implementing the policies of racial—against racial profiling enables them to better understand this thicket, as you describe it, that they, you know, inevitably get into when interacting with the public.

As far as, you know, the complexity of the training, I would say one thing here, and that is that immigration law certainly is complex. This is a summary—summary of the INA. It's not that—it's not nearly as thick as a summary of the Tax Code, but it is com-

plex. But the complexities don't—don't occur primarily at the point of arrest. The complexities occur at the point of adjudication because you have all of these conflicting claims being made where someone, you know, clearly was illegally present, but they have applications for adjustment or they want to make an application for adjustment in the middle of their immigration hearing. And so it's at the adjudicatory stage and it's at the adjustment stage where it really gets complex.

In terms of actually recognizing something that appears to be a violation of immigration law, like people piling out of the back of a semi tractor-trailer in the dead of night, that is not particularly complex, and that is something that can be taught to Federal officers and State and local officers alike in a relatively contracted period of time.

Ms. JACKSON LEE. Mr. Chairman, I know my time is up. Let me just offer one sentence to the gentleman's, the professor's comments, and say that the one missing element that we have in this room or don't have in this room is a legal alien who can express to you, I think more so than what you can offer, as to what racial profiling is all about. I think our Border Patrol agents did an excellent job on commandeering the smugglers, and so it wasn't local law enforcement. It was a combination of such. But I can't imagine that you would suggest, whether you were a city council—and I'm not sure where you were a city councilmember, but maybe not in a large city where you have a diverse population. I would think that we would have severe problems with the burden of law enforcement officers having to discern who is legal and who is not, and that the training gap would be enormous and we'd have serious constitutional problems on those who had the right to be here as citizens, and I don't think you've answered the question.

And I yield back. Thank you.

Mr. HOSTETTLER. The Chair now recognizes the gentlelady from Pennsylvania, Ms. Hart, for 5 minutes.

Ms. HART. Thank you, Mr. Chairman.

I want to thank the panelists for coming. I think you've identified some of the maybe improvements we could make in the bill which are important and also some practical experience, and I want to start with our local—not my local but a district attorney from Pennsylvania, Mr. Morganelli.

You obviously have had a number of experiences over the last 11 or so years that you've been in office dealing with immigration officials when arrests are made. And it appears from your testimony that the response has been troubling. When you deal with police officers after these incidents, have they had a reaction? Have they stated to you that there's some powerlessness they feel or something that could be better done than it is now?

Mr. MORGANELLI. Well, absolutely, Congresswoman Hart. First of all, I brought with me one of my county detectives, who's involved with this on a daily basis with local police. And the feedback that we get is as follows—and this picks on the point that Congresswoman Lee said. You know, this is not a situation where local police are out scouting the streets for, you know, Hispanics or blacks. I mean, racial profiling is a problem that I personally dealt with in Pennsylvania. When I was president of the Pennsylvania

DAs Association, I wrote the resolution and advocated for the DAs Association that we advocate a statewide study in Pennsylvania on racial profiling and make sure that we would condemn the practice and outlaw it. In fact, I was the author of that resolution, and I advocated that we do it because I think it's a terrible practice.

But the misunderstanding is that's not what we're doing. What we're talking about is routine police work. When they stop a vehicle for driving all over the roadways and they go out and they ask for identification of the driver, and the driver says, perhaps not in English, or communicates to the officer, we are not—you know, we are illegal aliens, we have no identification, or we have identification, but, you know, it's a resident alien card, and we check the number and it matches to someone else's number and it's not theirs.

I mean, local police are powerless at that point because what happens is they will contact INS and they'll say what were they doing? Well, they were driving recklessly on Route 22 and almost caused a major fatality. Well, if that's all they're doing, then just let them go.

This has happened numerous times.

Ms. HART. We had an experience in my district.

Mr. MORGANELLI. Yes, you did, and this happened also in the Lehigh Valley. And so in those situations, we don't have INS agents, you know, down the street that we call them out to the scene. I mean, that's just not practical. So if we're going to be serious about the issues—and it seems like there's agreement that we have a serious problem of 9 million illegal aliens in the country and we have to do something about it—from a practical sense it cannot be accomplished without having local police authority to detain solely on illegal immigration status. And the way it should be in a situation like that is the local police should be able to say, on their admission and their failure to provide any type of identification or fraudulent identification, that they're going to be taken and detained, and then INS will be contacted. And then those decisions are made about what their status is and whether they have issues dealing with their immigration status, and they're made by the Federal Government.

But at the street level, who else is out on the street other than local and State police that come in contact with these people every day?

Ms. HART. Then the clarifications that we're looking at or variations of those clarifications, would you see them as a burden on local law enforcement?

Mr. MORGANELLI. I don't think so. Now, look, I understand everyone has different opinions, and in perhaps California and in Texas, with all due respect to the mayor, it sounds to me like those policies are basically a surrender, like, you know, we're not going to ask and we don't want to know, we're just going to close our eyes to this issue, and that's fine. If that's the decisions in California and in Texas, I respect that. I respect them greatly. They're great States. But perhaps in Pennsylvania and in other States that's not the viewpoint, that we feel that that issue is important to our localities.

So, you know, I can't speak for every police officer and every chiefs association in this country. You've heard from California police chiefs. Perhaps Pennsylvania police chiefs think differently. I happen to think the police that we deal with would like to have the ability to detain when those situations arise because they feel powerless. I get calls all the time from local police who tell me, you know, last night there were 12 people in a van, they almost caused a major accident, they had no license to drive, they had no ID, they admitted that they were illegal aliens going down to Philadelphia, and we called and they just said just let them go.

So, you know, this—how do we clean up this problem of 9 million people who we don't know their identities, where they came from, whether they have criminal records or not, unless local police can detain so that Federal officials then can make those decisions? And perhaps some of those decisions will be not to deport or maybe to—but we have to have a preliminary detainment.

Ms. HART. Yes, there's no assumption, I don't think, that every person who is, you know, followed through on is going to end up in jail. I don't have that assumption. I don't expect—I don't have that expectation.

Mr. MORGANELLI. Right.

Ms. HART. But I want to thank you. I see my time is up, but thank you to the rest of the panelists. Unfortunately, I have to take off.

Thank you, Mr. Chairman.

Mr. HOSTETTLER. The gentlelady's time has expired.

The Chair now recognizes the gentlelady from California, Ms. Sánchez, for 5 minutes.

Ms. SÁNCHEZ. Thank you. I just want to make a couple of preliminary comments before I ask my question.

Let me give you another case, a case that actually happened in California with local law enforcement officers who believed that they had the authority to start enforcing civil immigration laws. And they seized a group of workers who were not driving, they were working in an orchard picking fruit. And they took them all—they detained them and took them all in under suspicion of being here illegally. In fact, there were a number of citizens that were in that group. They were not committing any crime, and they were detained for hours. And it, it—they are now under investigation and there are lawsuits pending.

One of the problems that I have specifically with the CLEAR Act is that it gives complete immunity to local law enforcement officials who want to start—want to start enforcing civil immigration law. And, and we've heard from one of the panelists say that, you know, local cops on the beat are not going to racially profile. Well, in a perfect world, that would be the truth. But the reality is we live in an imperfect world, where snap judgments can be made based upon a person's appearance or the manner in which they speak English, or even their lack of English.

And I'm going to give you one other example. My husband is an immigrant to this country. He comes from the U.K. and has blond hair and green eyes. And he pals around with a number of folks that came around the same time he did on work-sponsored visas. Some of those folks are from Latin American countries, who have

dark skin and dark hair. And whenever there was a hassle with their work papers or whenever there was investigation when they were all driving in a car, let me tell you that my husband was never required to provide identification. His cohorts were. And they were here in the country working legally under work-based visas.

So I think it's naive to believe that local police officers, who may be well-intentioned, do not sometimes make snap judgments on people based on their appearance or the way that they speak English, or even their lack of English, as there are many legal immigrants in this country who don't speak English well, or speak English with a heavy accent.

So I would want to ask Mr. Edwards and to Mr. Morganelli if you could please respond to these concerns that the CLEAR Act would give State and local law enforcement agents freedom to racially profile under the guise of national security by providing them complete immunity from lawsuits, which has typically been the remedy for folks who have had their civil rights violated based on these—this kind of profiling.

Mr. MORGANELLI. If I may go first.

It's an excellent point. First of all, you know, with any type of law enforcement operation, whether they're investigating burglaries or drug raids, we have a major case going on now in Lehigh Valley, where the police are being sued because they were executing a search warrant on a drug investigation. And whether they followed the rules properly or not, you know, that's a civil suite, because a death occurred.

So the immunity part of the bill, I think you may recall in my comments I indicated that perhaps you have to tweak the bill in some respects. And perhaps that's something that, that the Congress will take a look at in terms of tweaking and, and maybe removing.

All I can say is, is that generally speaking we all have to follow the rules and there should be some civil recourse for people's rights who are violated. If someone's rights are violated, generally our system allows for civil lawsuits to be brought against the police or against the Federal Government or the State government or the district attorney or whatever.

So, you know, I don't have—you know, the issue of immunity I'm not going to comment on because I think, you know, you might want to debate that and perhaps it's something that shouldn't be there, to alleviate your fears. But what I'm saying is, is that racial profiling is something that I've testified in Harrisburg on numerous times, worked closely with the Black Caucus in Pennsylvania to have a study, so I'm sensitive to it.

But what I'm saying is, is that this law is helpful to us because, in the situations where we're doing the right things—we're not racial profiling—where law enforcement comes across people in routine traffic stops, complaints in neighborhoods—we get a complaint to go to a house and we walk in and there's 40, 50 people sitting in there, and we ask for, you know, IDs, and they tell us, well, we don't have any IDs, we're illegal, we came in the country—And you'd be surprised how readily they admit it. The police then say, well, now what do we do? And we need to have some authority to detain.

And I agree—look, I agree with you Congressman Sánchez that if the police violate the rules or if they engage in civil rights violations, you know, there has to be some accountability there. I don't believe in immunity for any group of people if they violate someone's civil rights.

Ms. SÁNCHEZ. Thank you. Mr. Quan, last question, as I'm running out of time. Under the CLEAR Act—and I appreciate your testimony here today—authorized funding for the SCAAP program is increased to a billion dollars, but funding will be terminated if States fail to implement all of the provisions of the CLEAR Act. I just want to ask you, what would be the result of lost SCAAP funding for your State, and how would it impact the ability of the State of Texas to make their communities safe and improve their homeland security if that SCAAP funding is lost?

Mr. QUAN. Ms. Sánchez, as you know, we had a \$10 billion shortfall in our State budget this year. We've really had difficulties in making ends meet. I don't know the total amount that we receive in SCAAP funding every year, but certainly it would cripple our abilities to, to do our job. So while the Chairman mentioned this is voluntary, I mean, I don't think it's—I don't see it as voluntary. If we don't do it, we lose that ability. And as you know, we have a large immigrant population in Texas. We have a number of people who are deported every year.

And if I could just add on Mr. Morganelli's statement regarding the immigration judges being too lenient. The 1996 act took away their ability to be lenient. I mean, they have to deport. They don't get 6 months anymore. The most they can give is 120 days if there's an agreement before they go to trial. So I don't see where people are just being released on the streets. The judges I know, if that happens, the office of the general counsel looks at those judges very carefully to see what's going on.

So we are trying to enforce the immigration laws in cooperation with the Federal authorities. We're not trying not to do that. And so that funding is vital for our abilities to do that.

Ms. SÁNCHEZ. Thank you. I appreciate that. I just would like to make one last question—one last comment before I finish. That is, in California, if somebody is stopped for a traffic violation and they are not able to produce identification, they are taken to the station for fingerprinting, and they do run INS checks. So the power already exists to do those inquiries. And I don't see how that interest is further served by the CLEAR Act, which I, I think does exactly what Mr. Berman stated in his opening opinion—attempts to make Federal immigration agents out of local law enforcement on the cheap, where the Government really needs to be putting those money into the BCIS and the—Thank you.

Mr. HOSTETTLER. The gentlelady's time has expired. The chair now recognizes the gentleman from Arizona, Mr. Flake, for 5 minutes.

Mr. FLAKE. I thank the Chairman. I thank those who have testified. It's been very enlightening. I just want to make a couple of comments. I didn't in the beginning—I wanted to hear the testimony first.

Let me just agree with what has been said, particularly by Congressman Berman. The situation now, it's clear, is untenable. We

cannot sustain what's going on now, particularly in a border state like Arizona, with a few hundred miles of border. It is completely untenable now. We cannot continue as we are.

What we've seen over the past decade and a half is a big investment in border security. In fact, we've seen, I think, an increase about sixfold order in enforcement, as far as money. What has been accomplished is what used to be a circular pattern in migration has now turned into a settled pattern. The average stay of a Mexican migrant worker, for example, used to be about 2.2 years and now it's nearly eight. Because it's tough to cross the border. It's more expensive. It's dangerous. We've had 150 people die this year in Arizona already, a record, and we aren't even nearly through the year.

So what I question is whether or not this is simply another band-aid. It was said earlier by Mr. Morganelli that this shows that the Congress is now serious about the problem. I would submit that it shows that we're not. It shows that we're simply trying to do it on the cheap, as has been said before. This shows that we aren't serious about the problem.

Absent a program which creates a legal framework for willing workers to come and work for willing employers, we aren't serious about this at all, because we simply won't get a handle on this problem. It's very clear to those of us living in Arizona. I don't know about the rest of the country. I think Texas certainly feels the way—the same way, and so does California. But absent a program—

As it is right now, we simply, with a wink and a nod, allow what is going on to go on. In Arizona, while we're talking about—here—giving local law enforcement the ability to actually detain individuals, in Arizona the problem isn't—well, that's a problem as well, but initially it's a problem with the cities. They're coming saying we have to build shelters and places to house individuals who are here illegally so that they can be picked up to go work. I mean, it's—that's a long ways removed from the actual problem we're talking about today. But because there is a need for labor and as long as that need is there, people will come. Then the Federal Government has for a long time, just with a wink and a nod, allowed it to go on because we haven't had a legal framework for people to come and work and then return home.

So I guess the question that I would ask, first question, Mr. Meganelli—or Morganelli, absent such a program, do you think that this is any more than a band-aid to allow individuals at the local level, local law enforcement, to actually detain and enforce the immigration laws?

Mr. MORGANELLI. Well, I don't think it's a band-aid. I think that this is, as we all know, this is a complex problem. It's not a simple problem. It's going to take a combination of things to get this under control. But it's my view that, you know, in certain areas like in Pennsylvania, we come across the illegal aliens on a daily basis, and we have no power to detain them. I mean, that's the position we've taken. Now, today I heard the professor say that all of us have this power anyway, we just haven't exercised it, and maybe we ought to look into that.

But to get back to your point, you know, I'm not here to talk about guest worker programs. That's up to the Congress to decide. I'm looking at this as a crime issue, as an identity—identification of people. We don't know who these people are, we don't know if they have criminal records. We—they have fraudulent IDs. Social Security numbers from your State I find being used. It's your citizens in Arizona, your Social Security numbers are being used fraudulently in Eastern Pennsylvania. And it's a huge cost. And I, and I recall, Congressman, that you were one of the legislators that wrote to President Bush asking for, I think, \$200 million for, to reimburse hospital costs in Arizona.

So, you know, it's a huge expense. The cost of incarcerating these people who are committing crimes, the hospitalization costs. And you talk about workers—you know, a lot of people we come across aren't even working. They're not working. They are living in a house with maybe 10 other people who are working, and, and, and then trying to collect some benefits, you know, using a false ID trying to get welfare.

Mr. FLAKE. Okay.

Mr. MORGANELLI. We find that a lot. So this is a huge problem. But I don't think it's a band-aid, I think it's just part of the pro—solution. We need a little power here. You guys have to do a little border enforcement. We have to have, you know, commitment and political will to deport those who should be deported. And maybe we need a guest worker program—I don't know, I'm not an expert in that.

Mr. FLAKE. I'm just about out of time. Or I am, but I'll beg indulgence, just a minute more.

Mr. HOSTETTLER. Without objection.

Mr. FLAKE. You mentioned requests for funding. And that's another problem I have with this. This authorizes a billion dollars. Well, hey, we've been asking for money for years for the SCAAP program, and we get pennies on the dollar, frankly, in Arizona for incarceration and criminal justice costs—to say nothing of health care and education, which just are breaking the bank in Arizona. So we desperately, desperately need a broader fix than this. But—

Mr. MORGANELLI. But here's what I'd like to ask. I don't understand how granting the amnesty creates—makes that situation better. The hospitalization issues are still going to be there.

Mr. FLAKE. Nor do I. Nor do I. And that's why I'm not proposing granting amnesty.

Mr. MORGANELLI. All right.

Mr. FLAKE. But, Mr. Quan, I appreciated the testimony. And did you—let me just ask you that question, if you can answer in about 20 seconds. Absent a formal process to allow willing workers to come and work for willing employers, do you see this as anything more than a band-aid?

Mr. QUAN. I agree. I only see it as a bandage, Congressman Flake. And I think the fact that pointed out, that they're staying longer, you know, we have in the 1996 act a provision that if you leave the country after you've been here, that then you have a three- to 10-year bar and you have Federal penalties against you—that exasperate the situation. So they're trapped here somewhat.



I don't think that they necessarily want to stay forever. I think if we had a viable program—Senator Cornyn of Texas has introduced a bill; Congressman DeLay has supported a guest worker program. I think that's what we need to be looking at: How do we work regulating this flow to get people back to their homes countries? They can work here to meet our needs, and then go back to where they came from.

Mr. FLAKE. Thank you. And I appreciate the indulgence of the chair.

Mr. HOSTETTLER. The gentleman's time has expired. The chair now recognizes the gentleman from California, Mr. Berman, for 5 minutes. In order of appearance, yes.

Mr. BERMAN. You think you're higher in seniority?

Ms. LOFGREN. No.

Mr. BERMAN. I'd like you to educate me a little bit because sometimes when I hear things, I'm not sure I quite understand the situation. Mr. Kobach, you do have a lot of experience in the law. I take it the civil-criminal distinction is important because it's not a Federal crime to be in the country illegally. It's subject to the penalty of removal, of deportation, but not imprisonment. Is that an oversimplified conclusion?

Mr. KOBACH. Well, actually, it's kind of interesting. It's a patchwork quilt, if you will, the Immigration and Nationality Act. Some of the violations of the Act are technically civil violations, some are criminal. So if you enter without inspection—that is, you sneak across the border without going through a port of entry—that's a criminal violation. If you overstay your visa, which is probably the second most prominent way that individuals end up here illegally, that's a civil violation. And there are all kinds of distinctions.

Mr. BERMAN. But by and large, we—at the Federal level, we don't usually charge, indict people for sneaking across the border illegally? We usually——

Mr. KOBACH. We usually——

Mr. BERMAN. We have two options.

Mr. KOBACH. Yeah, you can remove or you can seek to criminally charge. What you typically see is, because, you know, the resources of the U.S. attorneys are so stretched in places like Arizona, in fact——

Mr. BERMAN. Ah.

Mr. KOBACH [continuing]. That you probably have the, only the actual people—the ringleaders of the smuggling operations are the ones who are charged with criminal violations of the INA more often than the people who are actually smuggled in.

Mr. BERMAN. But the overstay of a visa is a civil——

Mr. KOBACH. Yes, under current law.

Mr. BERMAN. If local law enforcement officers think that the executives of a company in their jurisdiction are engaging in violations of Federal antitrust law, should they have the capacity to arrest them and detain them for transfer to Federal officials?

Mr. KOBACH. Well, I mean, if——

Mr. BERMAN. I mean, I'm just trying——

Mr. KOBACH. If the——

Mr. BERMAN. Essentially I'm trying to understand.

Mr. KOBACH. Well, it depends, again, if you—One of the reasons why I think the distinction that is important is civil violations that render someone deportable. So if you're talking about a violation of antitrust law that is merely results in a fine, then the appropriate—

Mr. BERMAN. Yeah, civil penalty.

Mr. KOBACH. Yeah, then the appropriate agents to be involved would not necessarily be local police because local police are out there trying to find people who are like—you know, who are escaping a likely prison sentence or a likely deportation, where you actually have to grab the person and remove them.

Mr. BERMAN. As opposed to escaping a treble damages action for—

Mr. KOBACH. Frankly, I have actually looked at that exact issue you're raising. It's a great question, because there—it's an interesting hypothetical. But there aren't any—there's not case law out there. It would be an interesting question. If local police had some angle where they could provide useful assistance, but we haven't seen it yet.

Mr. BERMAN. I guess I would label this that they're smart, but they're lazy. The wisdom of Washington—I mean, this mindset in Washington, that we know best, has to be busted up. We should allow the people who are really smart, who have good training on their own, the people down there who see the problems day-to-day, they should have the ability to do this. That is, to detain people solely because they believe that they're in violation of—they're here not in status, they're illegal aliens.

So we should allow that to happen, so they're smart enough to do the job, but they're so lazy they don't want to do the job, and therefore we have to leverage penalties to force them to do the job they're smart enough to do but don't want to do. There's an element of that in this approach. It's not simply an authorization to do something. That, which by the way, you've already said that your reading of the law and the cases doesn't need a CLEAR Act because they have the implied inherent power to pick up and detain based on that; but that we now have to create a motivation for them to do something that they are talented enough to do but not willing to do, by leveraging money away from them to get them to do. Does that strike you as a strange way of approaching it?

Mr. KOBACH. Not necessarily. And I would just—when you described what they might do, I mean, it's not that they would just have a suspicion and then make an arrest. They would still be under the same Fourth Amendment constraints that guide any arrest.

Mr. BERMAN. Let's stop on that.

Mr. KOBACH. I'm only, like, one-tenth of the way through the answer.

Mr. BERMAN. I know, but I see the yellow light.

I would—rather—if we had another round, I would like to hear your full answer to that. But something more interesting is, describe to me the hypothetical case where a police officer has probable cause to believe that a person is out of status and should be allowed and in fact required, because of the way this is all structured, to pick that person up and detain him and apparently, under

the terms of this law, be responsible for removing him—a little local deportation operation, I guess. That hypothetical. Because I know it isn't racial profiling, I know it isn't accent, I know it isn't appearance. Tell me what it is.

Mr. KOBACH. Okay. I'd like to give two parts to this answer all at once, if I can. And the first one is, the first example is an in flagrante violation, a case where you—

Mr. BERMAN. A what?

Mr. KOBACH. In flagrante violation. The officer witnesses the act being violated. That is to say, he sees someone coming—you know, on a highway in the dark of night sees people piling out of the back of—you know, clearly dangerous situation—the back of an 18-wheeler. And this—those are real examples. I'm not just making this all up.

Mr. BERMAN. I know. I—

Mr. KOBACH. We read about it in the paper. A second example, and I think this is actually how the authority is most likely to work in reality and in the long run, is that it's just another tool that the officer has as he's making—as he's investigating. And this is also not a hypothetical. We can actually read about this one in case law.

That is, suppose a local officer is investigating a drug ring. And it is often the fact that cocaine trafficking and marijuana trafficking is coincident with movement across borders. And in the process of doing so, he learns that several members of the ring, through an informant, are here illegally and are undocumented. Now, he's building a case against the ring. He realizes that he can get three members out by using the tool of making the immigration arrest and then calling for—and then detaining briefly and then calling Federal authorities in. The others, he can build the case for prosecution.

It's just one of many tools in the box that he will use in his day-to-day law enforcement. The notion that State and local police officers will just leave the enforcement of garden variety crimes aside and become full-time immigration officers I don't think is very realistic. Indeed, I'd say it's implausible. And it certainly goes against the other counter-argument I'm hearing, that State and local police don't have the money to do this. The idea that they would suddenly say we don't have the money, but guess what, we're going to put everything else aside and we're going to do this full-time, I just don't think—

Mr. BERMAN. In order not to lose the money.

Mr. KOBACH. Well, that's the State, which is—the State policy makers which are facing that, the question of—

Mr. BERMAN. And cities, counties, and police departments.

Mr. KOBACH. No, I—but it's the individual discretion of the police officer. And nowhere does this act say that the police officer has to give up the kind of discretion that he has when he's trying to decide which crimes or which violations are worth following up on.

Mr. BERMAN. Under the CLEAR Act, could a police department decide this is not our priority we decide as a department not to pick up people solely on the basis of suspicions or probable cause or—By the way, why—I'm not sure why it's within the constitutional framework. What in here says it has to be probable cause?

Since it's not a crime, it's not constitutionally driven that it's probable cause. Why can't it be a suspicion?

Mr. KOBACH. It's because you're detaining, it's a notion of detention, and probable cause would apply to any detention.

Mr. HOSTETTLER. The gentleman's time has expired. Does the gentleman wish—

Mr. BERMAN. Ten additional minutes? However you want to do it, Mr. Chairman.

Mr. HOSTETTLER. We could do another round of questions.

Mr. BERMAN. I think we should have everybody go with—

Mr. HOSTETTLER. All right. The gentleman's time has expired. The chair now recognizes the gentlelady from California, Ms. Lofgren, for 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman. And I won't use all of my 5 minutes, and I'll give the rest to Howard to finish his questions.

I think—you know, as I listened to this discussion here today, I was pondering my experience as a local government official. Actually, I spent longer on the Board of Supervisors of Santa Clara County than I have in Congress, 14 years. And we were responsible for funding the jail and the DA's office and everything. And one of the things that we grew not to like very much were unfunded mandates. And when I got elected to Congress, I joined with a bipartisan coalition to try to prevent unfunded mandates. And now we've got a little point of order system that completely doesn't work.

And looking at what this bill is now, it just—it makes a bad situation worse. One of the other things I've learned in my years in Congress, not that long, is that there's a big difference between an authorization and appropriation. And right now, we are looking at local law enforcement agencies across the United States that are bearing the financial burden—as the States are too, but my heart goes out to the localities—bearing the burden of the failure of the Federal Government to adequately secure the borders. And the SCAAP funding, actually, was meant to compensate. It never did come all the way to compensation, but it helped a little bit.

And now we have this proposal that if local law enforcement don't take on additional costs—an additional mandate, yes, they're going to lose even the little bit of funding that we gave under SCAAP. And to me, I think that—that's not what we're supposed to be doing. So I just want to make that observation.

Secondarily, I want to talk—I had the same question Mr. Berman did, but I think he certainly developed it well enough. I mean, there are a lot of things that are civil offenses, Federal civil offenses, and I think that the theory is that we can authorize local police to arrest people for civil offenses under the Federal law. That's a very—I think it's a very bizarre theory and would lead to results that we would deeply regret as a society.

But I'll just close with a question that I have. And it really is a nerdy question, but I once taught immigration law, so—and the Immigration Service and their lack of technology just drives me crazy. Section 104 of the act, I believe, requires that information about unlawful status be entered into the NCIC. Now, when the NCIC was first developed, I was on the staff of my predecessor in

Congress, Don Edwards. And there was a lot of thought and care given to make sure that that database had some accountability, that police departments could actually rely on what was there.

And I'm just wondering, Mr. Quan, you know, as an immigration lawyer, that the change of address forms—I mean, if you don't fill out a change of address form, you've violated your immigration status.

Mr. QUAN. Exactly. You have to do that within 10 days of moving. And we mail it to an address in Washington. We don't know if it ever makes the system.

Ms. LOFGREN. I'll tell you, it doesn't.

Mr. QUAN. Oh.

Ms. LOFGREN. It's in big boxes. We have warehouses full of these little paper forms that are never entered into the system. And there's no money in this bill to enter them into the system. Plus, and I've heard this from—I guess I am going to take my whole minute, Mr. Berman—but the people who move two and three times a month, and this does happen for people who are low-income—

Mr. QUAN. Yes.

Ms. LOFGREN [continuing]. You know, they're sending forms constantly. And they're just piling up. And every one of those things would have to be entered into the NCIC. Plus a lot of it is unreliable, as you know, because if you move two or three times in a low-income community, you're never going to catch up and the data's always going to be wrong.

And so I'm just sort of wondering what that does to the integrity of the NCIC system in toto and—when we spent so much time that law enforcement could actually rely on it.

Mr. QUAN. I'm very concerned about it, too. As a matter of fact, as a person becomes lawful or has a work permit, like Ms. Sánchez talked about some of her friends—to get that into the system so they can get a Social Security number so they can show that they are legal and they can do that. It takes so long, and they're waiting around for weeks, maybe months, because the system is so slow at entering that data. So it's not very reliable. If a police officer goes to the data, that person may be a permanent resident by the time they apprehend the person, but it wouldn't show that.

Ms. LOFGREN. Well, I'm going to stop you and give the remainder of my few moments to Mr. Berman. I know this was set between 4 and 6:00, and it's now getting on to 7 and we've all made plans. So I'll just yield back my time.

Mr. HOSTETTLER. The gentlelady's time has expired. And I want to thank the mayor pro tem of Houston for his presence here. The Committee understands that he has a flight to make, and we don't want to make you late for that.

Mr. QUAN. Thank you, Mr. Chairman, and I will get that information that you've requested. I'll follow up with the Committee on that.

Ms. JACKSON LEE. Might I just thank Mayor Pro Tem Quan as well for your presence here and giving a very insightful presentation on the burden that cities would feel if monies were, if you will, eliminated on the basis of a city not obligating itself to the ac-

tions under the CLEAR Act if passed by this Congress. And thank you for your testimony.

Mr. QUAN. Thank you.

Mr. NORWOOD. Mr. Chairman.

Mr. HOSTETTLER. Yes?

Mr. NORWOOD. If Mr. Quan is going to leave, and I'm grateful for just being able to sit here, I have a litany of questions that I wanted to ask him. And I wonder, might you instruct the witness to answer them in writing. Since you don't have time——

Mr. QUAN. Yes. Or would you like to submit them——

Mr. NORWOOD. Yes, the questions will be submitted for the record.

Mr. QUAN. I'll be glad to answer them in writing, yes.

Mr. NORWOOD. Very good. Thank you once again, Mayor.

Mr. QUAN. Thank you.

Mr. HOSTETTLER. And the chair now recognizes the gentleman from Georgia, Mr. Norwood, for 5 minutes.

Mr. NORWOOD. I thank you, Mr. Chairman. Mr. Quan, you sure you can't stay for 10 more minutes?

I'm very grateful to be part of the questioning that we have here. I'm very grateful to you for having this hearing. And like so many Members of this Subcommittee, they know we have a disaster on our hands in this country.

Mr. Morganelli, it will help you to know that in the last 2 days, four separate committees have had four separate hearings regarding our immigration problems, the invasion of illegal immigrants into this country, what it's costing this country. So there is a great deal of concern in this Congress that something has to be done.

Just—Mr. Chairman, I have a big, lengthy statement for the record, if I may.

Mr. HOSTETTLER. Without objection.

[The prepared statement of Mr. Norwood follows in the Appendix]

Mr. NORWOOD. But I think this Committee ought to know that there are people who really believe in what we're doing here besides, to the contrary, the California chiefs of police. The National Sheriffs' Association, Mr. Chairman, Law Enforcement Alliance of America, Southern States Police Benevolent Association, Friends of Immigration for Law Enforcement—there are a lot of people.

There are a lot of sheriffs associations that agree with you, Mr. Morganelli, and I think if you would actually dig deep, anybody, just a little bit, the concerns basically are money. That's the bottom line. The fear is that, well, gosh, what if my state or my city, like Houston, doesn't agree to help the rest of America pick up criminal illegal aliens and potential terrorists, then we don't get our SCAAP funding. That's what they're worried about.

This has been called a number of times an unfunded mandate. Well, I don't know, up here you get confused about money, but I think two and a half billion dollars is a little bit of funding to start with. Mr. Flake mentioned a billion. This is two and a half billion in this bill, a lot more than they have in SCAAP funding now.

Now, is it a mandate? No, it's not a mandate. Maybe it would have been better had we had it to be a mandate, then the chiefs of police in California wouldn't have to worry about losing their

SCAAP funding; they would simply have had a mandate. That isn't my style; that isn't how I like to do things. If a section of this country wishes to become a safe harbor for criminal illegal aliens, who am I to say they shouldn't? Have at it. Do your thing. But there's a lot of this country who wants to deal with this very, very serious problem.

I wanted to point out a couple of things that were stated. I wanted to know, actually, if the Houston Police Department needed training in racial profiling. I'll bet the answer to that is no. I bet they have plenty of racial profile training now. Because racial profiling can occur in things other than illegal aliens. And I'll bet you have training in racial profiling, for example, in Pennsylvania, as do most states that I'm aware of around the country.

So it isn't like, oh, this is going to fail because all of these law enforcement agents, the 600,000 that we're asking—not to take over immigration in this country, simply help us with immigration in this country.

The other thing that needs to be pointed out, for those who want to read the bill, that immunity problem, the bill says very clearly, Notwithstanding any other provision of law. What this bill does do is it makes you immune from being sued because you've arrested an illegal alien, the same as a police officer has immunity from arresting a bank robber but notwithstanding any other provision of the law. So that's not necessarily a very good reason, I think, to not support this bill.

I want to point out to those who want to listen what this bill really is all about. Now, Mr. Flake is correct; there are other problems. Our legal immigration laws are in shambles. We're not dealing with that here. Maybe he wants to deal with that, or some other Member of Congress would deal just with the legal immigration problem. This isn't about the border. We haven't been successful on the border. We've got 10,000 Border Patrol agents down there; we've only allowed in somewhere between 8 and 12 million illegal aliens. I call that absolute failure. It's not working. Maybe somebody on this Committee wants to deal with that.

What we're dealing with and what we're trying to deal with is that 400,000 illegal aliens that have been in custody of the United States, let go, they were told to go home and come back in 2 weeks and we'll deport you, and we don't know where they are. Now, I'm interested in that group, and that's what we're trying to ask the local police to help us with.

Simply to ignore the fact that we have 80,000 violent criminals—we know their names. Now, we may not know their address, but we know their names. We need to do something about that. The fact that 3,700 of those come from al Qaeda-friendly countries. We need to do something about that. But if you think 2,000 Federal agents in Washington, D.C. can solve this problem, you're wrong. Neither can 200,000 Federal agents. It's the wrong people to help with the problem. We need the local sheriff. We need the local State patrols who are working the highways and working the streets.

And I want to make it very clear about this. The bill says, straight as you want to, to enforce——

Ms. JACKSON LEE. I'm here, Mr. Norwood.

Mr. NORWOOD. There you go.

—to enforce Federal immigration laws in the course of carrying out the officer's law enforcement duties. That is not the same thing as Mr. Quan would say, is that, oh, this bill is going to cause us to round up and detain all those people suspected of civil immigration. This is not what this bill does in—

Ms. JACKSON LEE. Will the gentleman yield?

Mr. NORWOOD. No, ma'am. You had my time and yours. I need a few minutes here.

That's not what this bill does. This bill simply says "in the course of your normal duty." If you get somebody who runs a red light and you need to ask questions about immigration, you should do that. You should do that to help America. Had that been done with some of the people that were involved in 9/11, who were stopped for a traffic violation, if we had just taken time to ask some of the questions that I hear in Houston are so difficult to ask, we might have had some prevention there.

What this is about, again, is 400,000 deportable illegal aliens, of which 80,000 are criminal, violent criminals. I've got a pedophile loose in my state right now simply because the INS would not do anything. We're asking help from local law enforcement. We are funding it at two and a half billion. Now, that may not be enough. And if Mr. Quan were here I would say this to him: I do not believe in unfunded Federal mandates. This is an authorization bill. If this bill is not funded through appropriations, it shouldn't take place. I don't think we ought to do that. And I'm going to make sure before we get to the floor it says that. We're going to either do this and fund it and try to get serious about illegal immigration in this country, or we're not. And we're going to find out.

Who believes in the rule of law? Who really believes in that? Who believes that when we pass a law in this country that we should enforce it? The world laughs at our immigration law. We need to do something about that. If we do it a little bit, it will discourage so many people from coming across our borders. My concern is who the heck are they? We don't know. How many of them of that 3,700 brought a dirty bomb with them? One? Was it 1 percent? Was it 10 percent? We don't know. We don't know where they are. Are we serious about homeland security? This is part of homeland security. It is illegal aliens who come into this country to cause terrorism.

You've got to ask the question. You can do it in the correct way. We're not suggesting you stop a truckload of people who may look to you like they're illegal. We're saying "in the process of your normal duties." If they're driving down the road obviously drunk, that particular officer was going to do that anyway, stop that person. That is not going to cost of City of Houston one more penny to stop a drunk driver. It's simply not. It's not going to cost Houston any more to ask a question or two.

And what we're saying in the bill is Federal Government, get on the stick. We're trying to tell INS and BICE they've got to do their job too. We're putting funding in it for them to do that too. If we're going to be a nation of laws, Mr. Chairman, we have to enforce the laws. If you don't believe we ought to enforce our laws, stand up



and say you believe we ought to repeal them, because we don't want to hurt anybody's feelings in making them a criminal.

Mr. HOSTETTLER. The gentleman's time has expired.

Mr. NORWOOD. I know. I'm sorry. Thank you, Mr. Chairman for the opportunity.

Ms. JACKSON LEE. Mr. Chairman, I ask unanimous consent to go out of order, my round. I can submit things in the record and come back.

Mr. HOSTETTLER. Without objection, yes.

Ms. JACKSON LEE. I am the Member remaining here to thank the Chairman for his indulgence of all of us and to acknowledge the presence of two guests here, and delighted to have them as guests in this Committee, and certainly would not want to interrupt Mr. Norwood. I simply wanted to counter and engage him. But let me, now that he has finished, offer some thoughts here that I think are very important. Unfortunately Mr. Quan did have to return back for responsibilities in Houston.

But let me just give a few points. First of all, there were 19 terrorists. Only three of them were over-stays. And if you had questioned those individuals on 9/10, it is likely that you could not have identified them as terrorists because the bulk of them were here legally, with legal visas.

What we need to secure the homeland is better intelligence. What I would say to my good friend from Georgia is that if he wants to engage in this kind of effort for his police department, that he should do it, or the State of Georgia should do it, and not force these laws on the United States of America.

Why? Mr. Morganelli, the example that you used about the police calling the INS with a group of individuals that they had stopped, and the INS saying that—let them go, that's not a fault or an issue to be solved by CLEAR Act. That's an issue on what I've been saying—training resources that we need and expanded INS officers and INS officers that work cooperatively with police departments. That's what is needed, not the fact that we need a CLEAR Act. Because your officers did what they were supposed to do.

It is outrageous for anyone to suggest that if illegal immigrants are engaged in criminal activity that police stand by and look askance and just stand there and say I can't do anything. For those of you who have never experienced racial profiling, please let me correct anyone to think. I am a strong supporter, as a former judge, of law enforcement officers. We work together. But they will tell you that they welcome, they welcome training and oversight as it relates to racial profiling. It is not the departments. It's not every officer. But it happens.

And you can be assured if you put in place the CLEAR Act, you're going to have a mountain of abuses. Not because I don't believe that our law enforcement officers from sheriffs to constables to police officers have the greatest of integrity. But as we well know, as we well know, in all of our lot, there are those who abuse the system. And so the CLEAR Act takes, my good friend, two and a half billion dollars. And I'm glad he says authorize it. We don't have two and a half billion dollars—maybe if we didn't have the war in Iraq and \$87 billion was sitting on this table right now. We realistically don't have two and a half billion dollars.

And my good friend Mr. Flake has got a bill, because he's suffering in Arizona and others are suffering in California and Texas, we've got issues to deal with by providing the kind of professional training and responsibility for our Border Patrol agents that I would venture to say is far more important than burdening local law enforcement on things that you all in Pennsylvania and Georgia—and I don't want to get this one State pitting against another—but can do. But what you're doing is you're forcing the Federal Government to burden local law enforcement and then fund it, two and a half billion dollars in this fiscal year, 2004, and \$6 billion in 2006, and \$12 billion, and going up.

You've got individuals who have come to this country for a simple reason of access to legalization. I hope that 1 day this Congress will find a way to solve those who are undocumented, that are here, by giving them access to legalization. Document them; those who don't meet the test are readily not to be viewed as those who will stay in this country.

I, too, want to fight against the siege that we think we might be under. And so I just simply say to you that your solutions are not the answers. Frankly, legal status is complicated, the documents are complicated, and therefore it will be questionable whether they would know how to do this.

To the professor, let me say this, that I appreciate very much the intellect that you brought to this. But I take issue with your New York Post editorial, where you indicate that we do not dignify the freedom riders of the 1960's with those who have come this time. Since I happen to know personally many of the freedom riders of the 1960's movement, I would venture to say to you that they would empathize with the immigrant freedom riders, some of whom are legal status individuals who come simply for a way of accessing justice. And I would caution you on suggesting that their ride denigrates the ride of the 1960's.

And that's why I would be concerned with this kind of legislation, Mr. Chairman. Frankly, I think we can authorize this all day long. This is pie in the sky. We don't have the money. And it is going to be an enormous burden on these cities. And I'm going to join my local governments all over the nation fighting against this excessive burden.

Because the real crux of the issue—because I'm not abandoning securing the homeland—is providing the resources for the homeland security and the INS offices, so that when they got a call from those law enforcement officers in Pennsylvania, they didn't say I can't be bothered; they got right there and dealt with the issue and knew how to deal with it.

And then separating out this whole idea that all of us are fighting terrorists by having law enforcement officers pick up simple immigrants who are here, maybe illegally—maybe illegally, I'll acknowledge that—but are not here trying to do us any harm. And you go back and look at your facts on 9/11 and not—this CLEAR Act couldn't have done anything about it. I'm against over-stays. The INS needs to deal with that—now the BCIS. Not this effort that you've got here that's not going to do anything.

Mr. Chairman, as I yield, let me provide information—I would ask unanimous consent to put in the record opposition by these

groups: The American Civil Liberties Union, that talks about the public safety issues and civil liberties violation. I ask unanimous consent to put that into the record. A statement by Leslie Orloff, director, Immigrant Women Program, NOW Legal Defense and Education, specifically talks about the fact that you lose the domestic violence issue, where these women are afraid to even come forward. I don't know how many of the witnesses have talked to smuggled-in individuals who have been abused, who we need to be able to have law enforcement breaking that smuggling ring and we can't do it if we don't engage the immigrants.

I'd like to put into the record, by MALDEF, a testimony that they would argue against this in terms of the fact that racial profiling and also the fact that safety issues are involved.

Do I have any more? One more.

And I have another one, Mr. Chairman, if you would. This was put in by—this is pages and pages from different States, national organizations, the American Anti-Discrimination, American Immigration Lawyers, Anti-Defamation League, Arab American Institute—this goes on and on. Catholic Legal Immigration Network, Hebrew Immigrant Aid Society, Leadership Conference on Civil Rights, National Coalition Against Domestic Violence. We have from Alabama, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Illinois, and just almost 50 States where there are organizations that are opposing this legislation.

I ask unanimous consent, Mr. Chairman, to put these in. And I thank the witnesses. I know this is not the end, but I do have to depart. And I do thank my guests, Mr. Deal and Mr. Norwood, for making this a very lively hearing this afternoon.

Mr. HOSTETTLER. Without objection.

Ms. JACKSON LEE. Thank you.

[The information follows in the Appendix]

Mr. HOSTETTLER. The gentlelady's time has expired. The chair now recognizes the gentleman from Georgia, Mr. Deal, for 5 minutes.

Mr. DEAL. Thank you, Mr. Chairman. Thank you for your allowance of Mr. Norwood and I to appear today. And thanks to the Members of the Committee as well.

I think several things have become very clear. One is that—and that's no pun intended—is that there is certainly a difference of opinion as to whether or not we should enforce immigration laws or we should ignore it. And that is really at the heart of this debate. It springs up in many fashions.

One thing that has occurred to me, however, in listening to the discussions here is the descriptions that have been used to talk about the provisions of the act. On the one hand, Mr. Flake calls it a band-aid, and on the other, Mr. Quan says it's too much. It's either one or the other, or maybe it's somewhere mixed in-between.

But the issue of whether or not it's an unfunded mandate is an interesting one. My local governments back home, whether it be the school board that's impacted severely by the effects of illegal immigration, where it is the local hospital that is impacted, whether it be every social agency and especially the law enforcement officers, where over half of the felonies and those incarcerated in my

local jail are now illegally in this country to begin with, they would say that the largest unfunded mandate that we have now is the fact that the Federal Government is not enforcing its immigration laws to begin with.

Now, the comment that I would like to ask a question about is that if Arizona, California, and Texas—and other States perhaps, in-between—have no interest in this legislation and regard the way it is worded as punitive, in that if they do not do certain things they are subject to losing certain funds, what if we flipped the coin and simply said, on the other hand, okay, if you don't want to do that, you don't have to; we're not going to have any sanctions against you. What if we reworded this act to say, This act authorizes those jurisdictions that are willing to cooperate and who will assist Federal immigration authorities to receive additional funds to compensate for the costs of their services. That way, you have a right to choose.

Now, I daresay if we had legislation like that in place, Mr. Norwood's district and my district would probably take advantage of that. And I daresay that those jurisdictions in the State of Georgia that did not, their citizens would rise up in protest and demand to know why they didn't. If it's only the State of Georgia that did it, I think it would then soon be the Alabama citizens asking why aren't you participating?

Is there any merit to considering that approach?

Mr. KOBACH. I think so. There certainly is. I mean, part of the problem here is that it's been characterized as an unfunded mandate when there really—it isn't mandatory in the current wording, and I think that wording would make it even more clear that it's not mandatory. And indeed, you know, SCAAP funds are funds that are tied to immigration enforcement, and this is—I think the Congress clarifying its intent as to what its priorities are in how States should assist in immigration enforcement.

And that's what, you know, SCAAP contemplates too, that kind of assistance. The notion that this is something new is clearly not the case. 287(g) of the Immigration and Nationality Act creates a much broader authority to do more than just, you know, arrest a person and then transfer them to Federal authority, but to do full enforcement in terms of assembling a case and operating as, effectively, deputy INS agents. And Florida has seen amazing success with that.

I mean, clearly, this assistance is something that Congress has invited and certainly would have the right to define.

Mr. EDWARDS. If I might add, as I read the authorization provisions at the beginning of the bill, what we have is basically just—and I do take Kris Kobach's point, to heart, that stating in there's authorization when it already exists under the Constitution may add to the confusion, and you might therefore look at saying it as Kris worded it.

But at the second part, the section that has a State function there, as I read it, there's full federalism respected. There's the opportunity for States to either act or not act at enacting a statute, a State statute that says clearly our law enforcement officers are authorized under our State laws to enforce immigration—Federal immigration laws to the extent authorized by the Federal Govern-

ment. That's not a mandate. It gives them the opportunity to do that and encouragement to do that.

There is a carrot and stick approach in the bill, and that may be viewed by some as a stick because that second requirement of the States is not really a requirement, it's an encouragement. It says, You should do this; the reason we think this should be done is because we condition receipt of SCAAP funds on that.

However, SCAAP is only this past fiscal year that expired yesterday was only \$250 million. And Arizona experiences something like 300-plus million-dollar costs just for housing the illegal aliens that it has. And that's not to mention all the other criminal justice and processing and transportation costs and stuff.

So, you know, it's not really covering any costs, so it's really a fairly low amount for a penalty there that you're talking about. It's not much of a stick, and it's certainly not an unfunded Federal mandate because you would still have the opportunity to act or not act as a State or locality.

Mr. MORGANELLI. With respect to this issue, what really gets me mad, really, is when I read, for example, in 2001, five States—Arizona, 23 million; California, 225 million; Texas, \$45 million; Florida, 28 million; New York City—New York, 94 million of SCAAP funds. That was 2001. And you know what? In many of those States we have sanctuary policies, where that—it's costing those States tons of dollars and, as he just pointed out, not even reimbursing the total costs.

But you know what? That's costing Pennsylvania taxpayers and Georgia taxpayers and, you know, everywhere around the country that's shared. And yet we have these States and the mayor telling us we're not—we're not going to ask anyone if they're illegal or not. And the fact of the matter is these are all who have committed serious crimes.

Now, we've got to get a handle on this. And the only way to do so is to have the local law enforcement be able to identify and detain, in the course of their job, as Congressman Norwood said, not racial profiling, not going—but in the course of their jobs. It will help solve the problem.

It is not the total answer; we all know that. But when I see these States taking my tax dollars that I pay, in that quantity, and at the same time telling me, well, we're not asking, we're closing our eyes, we're not allowed to ask, the police aren't allowed to ask, and the police are going to be ordered not to—it's an outrage.

And quite frankly, there are—I think there was a civil action in New York, or perhaps contemplated, where the police weren't allowed to ask and serious crimes were committed by those same people who were released. There are liability issues that these cities and towns who have these sanctuary policies are going to start to experience if this continues.

Mr. EDWARDS. Mr. Chairman, if I may just add one thought, if you'll indulge?

Congress every day conditions the receipt of Federal funds. I mean, you all the time say you have to do this in order to receive this money. So why is this any different? And why is this, even at such a very small amount of money comparatively, relatively speaking, even an issue?

And another thought, since the Chairman is allowing me to filibuster here—

Mr. HOSTETTLER. Doing that all day.

Mr. EDWARDS. The opposition was quite generated here. So I would say Mr. Norwood has crafted a pretty effective bill that's a live threat to opponents of it, it seems, because they are pulling out, apparently, all the stops to get all the groups that they can possibly get to sign a letter and to sign this or that, to petition against the bill.

However, there's a Roper poll—I'll just cite one poll or draw attention to it from my full testimony—a Roper poll from this past spring, and 85 percent—and something like two-thirds strongly agreed—that localities and local police and State police and so forth should be required to tell the Federal Government when they have an illegal in custody.

So why is this controversial except in some little bowl of liberalism? I don't understand where controversy comes out of this.

Mr. DEAL. Mr. Chairman, could I make one final statement? This has been an interesting day for me on the issue of immigration. Earlier today, Ms. Sánchez and I, on the Government Reform Committee, had a hearing on the issue of extradition and the problems we're facing there. And we all wring our hands and commiserate with the widow whose husband, an officer in San Mateo, was literally executed by an illegal alien who had three times been deported, and then killed her husband and fled back to Mexico. And the problem of now you cannot really extradite these back because of the Supreme Court decision of Mexico that the only way the State of California, because of the way their murder statutes are worded, would be able to get him back would be to assure Mexico first of all, no capital punishment; now they've gone so far as to say, even life imprisonment is not an acceptable basis for extraditing back.

So the only way that, in that case, that the district attorneys there could get that individual back would be to reduce that to a manslaughter charge in order to get him back. The magnitude of this problem is horrendous. And I quite frankly think it is time that we stop waiting until those bad cases happen and we say, oh, that's just such a terrible problem. It's time to start being able to do something about it now.

And I thank the Chairman and his indulgence for allowing me to be here today. Thank you.

Mr. HOSTETTLER. The gentleman's time has expired. The chair will now recognize himself for a second round of questions. And I appreciate the indulgence of the panel. I will make my questions very succinct to you.

First of all, Professor Kobach, Mr. Quan states in his testimony the CLEAR Act would constitute an unfunded mandate to the States. How would you respond to that?

Mr. KOBACH. Two ways. First, that if you look at the bill, off the top it's not unfunded. Clearly, it would dramatically increase the funds that exist. And secondly, it's not mandatory, so it's not a mandate. I think he's wrong on both accounts. But secondly, you have to look beyond just what happens in this act and the provision of money there. You have to look at the costs of illegal immi-

gration—and this is a point that’s been made already—and the States are burying these costs.

One of the greatest costs of illegal immigration is education. After the Supreme Court rendered its decision in *Plyler v. Doe*, it became clear that the States were obliged to provide education to illegal aliens here in this country of primary and secondary school age. That is a huge expense, and many States are, you know, bursting at the seams with schools that are poorly funded. And that only compounds the problem.

Medical expenses have also been mentioned. There are known cases of illegal aliens who have crossed into the United States specifically to receive an operation, a very costly operation, knowing that full well—knowing full well that when they go to the hospital they cannot be turned away.

There’s other social services, and there’s also the cost of law enforcement, primarily Federal Government law enforcement at this point, just the detention and the hearings and the process of trying to enforce our immigration laws. These are huge costs which the States themselves can—if they cooperate and if we get a handle on the immigration problem, you can start to recoup some of those costs.

And I think, actually, one aspect of the CLEAR Act that I think really ought to be highlighted is the asset forfeiture provision. That will, I think, offer a huge potential for States to start to recoup some of those costs. And I think it’s easy to underestimate what that potentially—I mean, if you see what asset forfeiture has done in other areas, like drug enforcement, it is a massive impact on the ability to fund these operations.

And so I don’t think it’s an unfunded mandate and I don’t think it’s anything close to it.

Mr. HOSTETTLER. Mr. Edwards, opponents of the legislation claim that it would require State and local police to enforce the immigration laws. Do you believe the CLEAR Act forces, requires State and local police to enforce the immigration laws, as it’s written?

Mr. EDWARDS. No, sir, I do not. I believe that, as I explained a few moments ago, that States have a full opportunity to accept or reject writing a new law on their books.

Now, another approach you might do is, reword the—I believe it was section 102, that says if a State or locality has a policy of non-compliance with the Federal Government—and so you’d remove any opportunity for people to claim, falsely, I believe, that the States have to act or lose their SCAAP money, then just say, okay, you don’t have to pass a new law; but if anybody passes an affirmative law that says you are not going to cooperate, such as the Houston sanctuary policy and so forth, then they would be ineligible for funding. Stuff like—an approach like that might work.

Mr. HOSTETTLER. One more question for Mr. Kobach. In his testimony, Mayor Quan states that if the Senate were to adopt the CLEAR Act, it would blatantly preempt State and local laws. Is that true?

Mr. KOBACH. I’m glad you asked that question, because I—with all due respect to Mr. Quan’s statement, I would disagree with his characterization of preemption. H.R. 2671 does not fit within the

normal categories or preemption as the courts have understood preemption to exist. Preemption occurs where the Federal Government displaces the State government's authority to act completely. The three types of preemption that the courts have recognized—express preemption, field preemption, and conflict preemption—I won't bore the remaining Committee Members by going into real detail here—but this doesn't fit any of those categories.

A condition on the receipt of Federal funds in no way preempts—displaces the State governments from the field. Indeed, the CLEAR Act actually invites State governments into the field. Moreover, by allowing State governments to make policy choices and, again, inviting them to make policy choices, it does not displace them from this area. So I'm not sure if he meant something else other than preemption. But under current case law, this is not an example of Congress preempting State authority.

Mr. HOSTETTLER. Thank you. The chair now recognizes the gentleman from Georgia, Mr. Norwood, for questions for 5 minutes.

Mr. NORWOOD. Thank you, Mr. Chairman. I'm going to be very brief. There's been so much misinformation about what the CLEAR Act does in terms of abuse of women and children, as if we were to pass this law, everybody—nobody would ever go to the police again.

And I'd like to submit for the record, Mr. Chairman, the language on what a U Visa is, which is available now and would be available after this act, so that we can be very clear that abused women, even though they could be deported because they're illegal, they can get immunity under the U Visa simply because of abuse. So—

Mr. HOSTETTLER. Without objection.

Mr. NORWOOD. Thank you.

[The information referred to follows in the Appendix]

Mr. NORWOOD. I want to go back to a little bit to what Congressman Deal and, I think, Mr. Kobach, you were talking about in terms of the costs to this country of not enforcing illegal immigration. And you were talking about the costs to the States, but it isn't just the States. The Federal Government picks up a big piece of the cost for HUD housing. The Federal Government picks up a big piece of the cost for Medicare, hospitalization funding. So—Medicaid, I'm sorry. Thank you. I've listened too long today.

The point is, there is no telling—there's truly no telling—and I don't know if we have an agency up here that can figure out what it really cost the nation with the invasion of 10 to 13 million illegal immigrants in this country. And for us to have places that want to have sanctuaries that refuse to even ask if you are a citizen of this country or not, is just amazing to me.

And I'd like—we've got a lot of lawyers here. I need to ask a question, if I may, about Houston's policy. The way I read their policy, they restrict their officers from contacting INS if an alien has been arrested for a Class C misdemeanor. In other words, their officers can't ask any of the questions. Isn't that illegal under Federal law?

Mr. KOBACH. I think that—I have heard the argument made that State noncompliance of that level is illegal. I haven't seen any case



law on the subject. I think an argument could be made that that does violate some provisions of current——

Mr. NORWOOD. Well, the current Federal law says you can't restrict. But that's basically what you do when you tell your law enforcement people do everything you need to do, but for God's sake don't ask them if they're a citizen. Isn't that restricting?

Mr. EDWARDS. There was a provision added in the 1996 immigration law, the reform act, that does prohibit States and localities from that ostensibly, but——

Mr. NORWOOD. I guarantee you, I just read it this afternoon.

Mr. EDWARDS. They're still doing it.

Mr. NORWOOD. My question is, though, would—by telling your police officers not to even ask a question, doesn't that restrict, which is what the Federal law says you cannot do?

Lastly, maybe you can explain this to me. In their order down in Houston, 500-5, they state that it is illegal to cross our borders without inspection. But it's only illegal during the minutes that you cross the border. It becomes okay once you get inland, once you get into the country. I mean, that's basically what they're saying. They're saying, yes, this is—we have immigration law that says you cannot cross our border, but once you cross that line and get into the country, no questions to be asked. That's not illegal to be here, it was just illegal to cross the border.

Is that true?

Mr. KOBACH. Not under Federal law. The person's still guilty of the criminal offense under the INA of entry without inspection. And I don't know if they're attempting to redefine the person's Federal offenses or not; I don't suppose that they are. But in effect, it seems to be that they are saying we aren't going to encourage the enforcement of this Federal provision.

Mr. NORWOOD. That sort of—it's illegal to rob a bank until you leave the bank, then it's okay. I mean, what——

Mr. KOBACH. And if I might add just one other thing here, while we're talking about things that are kind of absurd in the law. The point was made earlier that this would somehow—that it's somehow a bad idea to have civil provisions of the INA be subject to arrest by State and local police. The notion that somehow the civil ones are less extreme, the civil violations are less extreme than the criminal ones, simply doesn't comport with reality. If you read through this thing, you find that the failure to change an address—something that Mr. Quan mentioned—is actually a criminal violation of the act, but over-staying a visa, something that three of the hijackers did, is a civil violation. It's not that the civil ones are less harmful to this country, it's just that—it's just the way the act is put together.

Mr. NORWOOD. That's part of what we're trying to do in the CLEAR Act, is make this simpler. And it does. It will no longer be a civil violation when we get this—it's going to be a felony. And that clears it up for many people on the streets. If every case is a felony, you need to deal with it.

Mr. Chairman, you've been extremely gracious in allowing us to come in on your Subcommittee hearing. And I, for one, and I'm sure Congressman Deal are very grateful for the time you've given us.

Mr. HOSTETTLER. Well, it's been an interesting hearing. The gentleman's time has expired. Does the gentleman from Georgia, Mr. Deal, wish to——

At this point the chair wishes to inform all Members that they have seven legislative days to insert further remarks into the record.

And I want to thank the witnesses, Mr. Morganelli, Professor Kobach, Dr. Edwards, and Mayor Quan in absentia for your being here today and your answering our questions and testifying before this Subcommittee. Your participation has been invaluable in this process.

The Committee's business being completed, the——

Oh, and without objection and unanimous consent, I will offer the General Order of the Houston Police Department No. 500–5 into the record.

[The information referred to follows in the Appendix]

Mr. HOSTETTLER. The business of the Subcommittee being complete, we are adjourned.

[Whereupon, at 7:15 p.m., the Subcommittee was adjourned.]

## A P P E N D I X

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IMMEDIATE RELEASE  
Oct. 1, 2003

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**Opening Statement of John N. Hostettler at the Subcommittee on Immigration, Border Security, and Claims' Oversight Hearing on the "Clear Law Enforcement for Criminal Alien Removal Act of 2003"**

"Today, the Subcommittee is holding a hearing to examine H.R. 2671, the Clear Law Enforcement for Criminal Alien Removal Act, or CLEAR Act.

"The CLEAR Act clarifies the authority of state and local officers to assist the federal government in enforcing the immigration laws. It provides a means for federal, state, and local law-enforcement officers to work together to apprehend, detain, and remove illegal aliens.

"This is timely legislation. Our nation faces an illegal immigration crisis of epic proportions. The former INS estimated that there were five million illegal aliens in 1996 in the United States. That number ballooned to eight million in the past two years, and some estimate the illegal population in the United States to be upwards of 10 million today.

"For the last few years, some 500,000 illegal aliens have been entering the United States annually, despite the fact that we have strengthened controls at our borders. Why would aliens take the risk of crossing in rugged and treacherous terrain, or place their lives in the hands of ruthless smugglers? Because they believe that once in this country, they can live and work here without fear of detection.

"In the late 1990s and the early part of this decade, illegal aliens and unscrupulous employers took advantage of the disorganized INS, an agency that had more missions, it seems, than will or means to carry out.

"Since the September 11 attacks, those aliens have exploited the fact that immigration-enforcement resources have been diverted to the fight against terror.

"This bill would expressly give state and local police the resources and authority to assist in immigration enforcement. Many police officers have sought such authority, to assist the federal government in the vital task of enforcing this nation's immigration laws.

"There are those who oppose this bill, however.

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“Some opponents argue that local officers should not have to enforce the federal immigration laws. I would note that participation in enforcement under the bill is voluntary.

“Other opponents argue that local police have no place assisting enforcement of the federal immigration laws. I would note that local police help other federal agencies, such as the DEA and FBI. I would also respond that having law-enforcement entities work together, as occurs daily on Joint Terrorism Task Forces, is the best way to ensure the safety of the American people.

“Still others have argued that having local police officers assist Immigration and Customs Enforcement (ICE) in enforcing the immigration laws would damage relations between local police and the immigrant communities.

“As I understand these arguments, aliens in those communities are in a vulnerable position, where they are preyed upon by thugs and other criminals, opportunists, and abusive spouses. Critics are concerned that such aliens will be unwilling to go to police who assist immigration officers.

“In response, I first note that it makes no sense to argue that, in a free and democratic society, the weak are better protected by concealment and deception than they are by the rule of law.

“The concept that aliens are more secure residing in a quasi-legal underworld, in which their illegal status is hidden by police otherwise sworn to uphold the law, is illogical, at best.

“Such arguments also fail to take notice of two facts:

“First, police and prosecutors would retain the discretion, even under the CLEAR Act, not to take action with respect to the witnesses to, or the victims of, crime.

“Second, immigrant victims of many crimes are eligible for relief, particularly under the U visa program. Battered spouses are eligible for additional relief, including cancellation of removal.

“Arguments that local immigration enforcement would harm relations between police and communities are also unduly speculative, because they assume that local sanctuary policies prompt alien communities to trust the authorities.

“What is not speculative, however, is that illegal aliens who are arrested by local police, but are released without being turned over to ICE, are free to commit additional crimes, often against other immigrants.

“Enrique Alvarez, for example, was an illegal alien at the time that he allegedly kidnapped and assaulted a nine-year old victim in early June 2003. He was also illegal three years earlier, in 2000, when, it has been reported, the San Jose police arrested him on suspicion of auto theft. It

## PREPARED STATEMENT OF CONGRESSWOMAN SHEILA JACKSON LEE

I do not want local police forces to enforce immigration law. Immigration law is a complicated body of law that requires extensive training and expertise. Local law enforcement officials do not have the training and expertise that is necessary to determine who is present lawfully and who is not.

Community-based policing is one of the most powerful law enforcement tools available. By developing strong ties with local communities, police departments are able to obtain valuable information that helps them to fight crime. The development of community-based policing has been widely recognized as an effective tool for keeping kids off drugs, combating gang violence, and reducing crime rates in neighborhoods around the country.

In immigrant communities, it is particularly difficult for the police to establish the relationships that are the foundations for such successful police work. Many immigrants come from countries in which people are afraid of police, who may be corrupt or even violent, and the prospect of being reported to the immigration service would be further reason for distrusting the police.

In some cities, criminals have exploited the fear that immigrant communities have of all law enforcement officials. For instance in Durham, North Carolina, thieves told their victims - in a community of migrant workers and new immigrants - that if they called the police they would be deported. Local police officers have found that people are being robbed multiple times and are not reporting the crimes because of such fear instilled by robbers. These immigrants are left vulnerable to crimes of all sorts, not just robbery. In 1998, Elena Gonzalez, an immigrant in New Jersey, was found murdered in the basement of her apartment. Friends of the woman say that the suspected murderer, her former boyfriend, threatened to report her to the INS if she did not do what she was told.

I also want to point out that Immigrants have performed heroic deeds in our country. For instance, Kwame James, a Canadian immigrant, risked his life to subdue a terrorist on an airplane. This professional basketball player was one of the men who subdued shoe-bomber Richard Reid aboard a Paris-to-Miami flight in December of 2001. James had been playing for a French team and was on his way home when the attack occurred. Asleep, he awoke to a plane full of screaming people. A flight attendant approached him for help. He rushed back to where Reid was struggling with passengers and crew. At 6 feet 8 inches and 220 pounds, James still had to struggle to hold down Reid, who was about the same size. Afterwards, he saw the flight attendants take away Reid's shoes, which were filled with plastic explosives.

Many communities find it difficult financially to support a police force with the personnel and equipment necessary to perform regular police work. Requiring state and local police forces to report to the immigration service would be a misuse of these limited resources. The immigration service also has limited resources. The immigration service does not have the resources it needs to deport dangerous criminal aliens, prevent persons from unlawfully entering or remaining in the United States, and enforce immigration laws in the interior of the country. Having to respond to every state and local police officer's report of someone who appears to be an illegal alien would prevent the immigration service from properly prioritizing its efforts.

Local police can and should report immigrants to the immigration service in some situations. The decision to contact the immigration service, however, should be a matter of police discretion, not a federal requirement.

## PREPARED STATEMENT OF CONGRESSMAN STEVE KING

Chairman Hostettler, Thank you for holding this hearing. I am a cosponsor of the CLEAR Act because I believe we must do all we can to increase cooperation between federal and local law enforcement to apprehend and remove criminal illegal aliens. Law enforcement officers desperately need the tools the CLEAR Act gives them to protect residents from crime.

Interior immigration enforcement is essential to the overall integrity of our immigration system. There are over 340,000 alien absconders-illegal aliens under a final order of removal-who have evaded capture. We must give law enforcement the tools they need to get these criminals out of our communities. It makes sense to utilize state and local officers to improve the enforcement of our immigration laws. At the same time we must also ensure that the federal government, particularly the Bureau of Immigration and Customs Enforcement (ICE) is responsive to local law enforcement and provides them with the necessary back up and follow through. There have been situations in the past where local authorities arrest illegal aliens, only

to have the federal immigration authorities fail to follow through and take custody of these criminals-resulting in the release of a criminal alien. Release of a criminal alien due to lack of follow through is a grave miscarriage of justice. I will not stand for such neglect of duty. Local officers need and deserve our help.

I am also appalled by the so-called "sanctuary" policies of certain localities. These policies prohibit an officer from reporting violations of our immigration laws to the federal authorities. Such sanctuary policies are against the law. Localities that direct their officers not to inquire about a criminal's immigration status not only undermine United States immigration policy, they also hurt their own communities by not turning illegal aliens over to federal authorities. Instead, these criminal illegal aliens go on to commit further crimes that could have been prevented.

Thank you Mr. Chairman, I look forward to hearing from the witnesses today and commend Mr. Norwood for his work on the CLEAR Act.

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**Opening Statement  
Congresswoman Melissa Hart  
House Subcommittee on Immigration, Border Security, and Claims  
Legislative Hearing on H.R. 2671,  
The Clear Law Enforcement for Criminal Alien Removal Act  
October 1, 2003**

Mr. Chairman, thank you for holding today's hearing on this important, commonsense legislation – H.R. 2671, The Clear Law Enforcement for Criminal Alien Removal Act.

The history of the district that I represent and, in fact, all of Western Pennsylvania is one of immigrants seeking better opportunities for themselves and their families, working hard, and establishing roots in America. At the same time, these new Americans fueled the boom of the steel and coal industry, that not only spurred the growth of Western Pennsylvania, but was the backbone of developing a stronger America.

The vast majority of individuals who immigrate to the United States arrive with these goals in mind. Unfortunately, many arrive illegally – totaling as many as 8 million illegal immigrants in the U.S. today. Additionally, some immigrants arrive with criminal purposes in mind. Following the events of September 11, addressing the issues surrounding illegal immigration is more important than ever, and it has impacted the duties of law enforcement all the way from the federal to the local first responders.

The federal government has made a major commitment to help the first responders on the frontlines of the domestic War on Terror, but beyond resources we must make sure they have the authority to enforce our laws and protect our citizens.

One of the major complaints about our domestic security after September 11 was the lack of coordination between federal agencies and between federal and state officials. Unfortunately, these problems have not been entirely solved, especially between federal immigration officials and state and local law enforcement.

This problem became very clear when local police near my district in Pennsylvania stopped a vehicle on a routine traffic stop. Upon stopping the vehicle, the police discovered a number of illegal aliens traveling across Pennsylvania. The police called the local immigration office inquiring what to do with these individuals. They were told to let them go.

This story was reported in the *Pittsburgh Tribune Review* and many of my constituents called upset about the lack of a response. At a time when we are trying to improve domestic security, my constituents were shocked that federal officials simply told the police to let these individuals go. No one knew who these individuals were or why they were here – and they were released.



The incident near Pittsburgh builds upon a number of highly publicized cases where illegal immigrants were released from custody, only to commit heinous crimes such as rape and murder, further complicating the job of local law enforcement. With only 2,000 interior immigration enforcement officers working in the U.S. and more than 300,000 criminal aliens in the U.S. and millions of undocumented illegal aliens, we need all the help that we can get to enforce our immigration and criminal laws.

This is why I was happy to join with Congressman Charlie Norwood and a number of my colleagues in introducing H.R. 2671, the Clear Law Enforcement for Criminal Alien Removal Act (CLEAR Act). This legislation clarifies the authority of state and local law enforcement officials to enforce violations of our immigration laws.

In addition, the legislation creates no new mandate on state and local officials. If they are interested in enforcing our immigration laws, then they will be eligible for \$2.6 billion in State Criminal Alien Assistance Program (SCAAP) funding and the grants provided in the bill. If a state or city decides to ignore our laws and not aid in enforcement, then they will not be eligible for the funding.

The bill also improves the information available to police in the line of duty. By requiring the Department of Homeland Security to provide the Department of Justice's National Crime Information Center (NCIC) with information about immigration violations, police will know the immigration status of individuals that they may encounter while on duty.

Critics of the bill argue that clarifying the authority of state and local police to enforce federal immigration law will make our communities less safe by overburdening our officers and creating fear of the police. The last thing that we want to do is make our streets less safe, but it is disingenuous to argue that by enforcing our laws our communities will be more dangerous.

First, there is no new mandate on state and local police under the CLEAR Act. As noted by the many cases in which officers have encountered illegal aliens, police are already taking the steps to and want to enforce our immigration laws. In fact, H.R. 2671 has the support of law enforcement groups such as the National Sheriff's Association, Law Enforcement Alliance of America, Southern States Police Benevolent Association, and Friends of Immigration Law Enforcement. The CLEAR Act simply clarifies the authority and provides the proper training and resources needed to assist our state and local police.

Second, the idea that immigrants will fear the police if our laws are enforced troubles me, especially the criticism that battered immigrant women will fear reporting abuse to the police. Since beginning my career as a state senator, I have worked hard on legislation that protects and supports battered women and I do not think that the CLEAR Act reduces these protections.

Nothing in the CLEAR Act interferes with the “U” visa category available to immigrants who are victims of violence, regardless of their status. The “U” visa adjusts the status of and protects battered immigrants willing to come forward and inform the proper authorities. This protection is still in place and I would hope that any battered immigrant would take advantage of this protection.

Post-September 11, the need to fully enforce our laws and coordinate our security at all levels is more important than ever. The CLEAR Act is a commonsense step towards making our communities safer and removing some of the most dangerous criminals from our streets.

## PREPARED STATEMENT OF CONGRESSWOMAN ZOE LOFGREN

Mr. Chairman, this bill, the "Clear Law Enforcement for Criminal Alien Removal Act", has so many things wrong with it, we would have to be here for hours just to list them. With every new read of this bill, I discover more and more problems that raise very serious concerns. Let me just list a few.

First, who better to listen to about law enforcement than the individuals responsible for keeping us safe - our local police chiefs? I have listened and they tell me this bill would be terrible for their police forces.

In a letter to Senator Feinstein, the California Police Chiefs' Association says, "It is the strong opinion of the California Police Chiefs' Association that in order for local and state law enforcement organizations to be effective partners with their communities, it is imperative that they not be placed in the role of detaining and arresting individuals based solely on a change in their immigration status."

Their letter continues, "the proposed CLEAR Act, however, undermines the fundamental partnerships that our police agencies have with their communities. That partnership is essential to effective law enforcement." Let me repeat, the California Police Chiefs' Association, comprised of experts on law enforcement, says the CLEAR Act will undermine the fundamental partnerships with communities that are essential to effective law enforcement. If this does not convince everyone that this is a bad bill, then I don't know what will.

Second, I am concerned about the additional funding this bill will purportedly authorize for our already strapped local law enforcement agencies. Every year it is a fight to get the little reimbursements we can from the State Criminal Alien Assistance Program (SCAAP). The President zeros out the SCAAP budget and we fight to get whatever we can.

Moreover, SCAAP reimbursements currently only allow for reimbursements for criminal aliens, not immigration violators without criminal history. This bill will give no SCAAP funding for all the new non-criminal immigrants the local police will have to hold in their jails and prisons.

Furthermore, the Department of Justice is trying to eliminate funding for so-called "unverifiable" claims for reimbursement that could cut reimbursements in my home state of California by fourteen percent. They have also decided to change reimbursements so that states will only be reimbursed for convicted criminals. That would mean further cuts by about 18 percent around the country.

With all these cuts in SCAAP and restrictions on the reimbursement formula, how do we expect that states will be reimbursed for all the new non-criminal aliens they are supposed to detain?

Our local police officers are already strapped for cash trying to deal with local law enforcement and now with homeland security. How are they expected to do their regular job, homeland security, and now immigration enforcement that they are not even trained to do?

California has the highest SCAAP funding levels and the highest number of undocumented immigrants. We will have to shoulder most of the burden without reimbursement for a job that belongs to the federal government.

Another serious concern is with the language of this legislation. It states "Notwithstanding any other provision of law and reaffirming the existing general authority, law enforcement personnel of a State or a political subdivision of a State are fully authorized to investigate, apprehend, detain, or remove aliens in the United States . . ."

What does it mean to "investigate, apprehend, detain, or remove" aliens? We have an entire immigration law written for the federal Department of Homeland Security, not for local law enforcement. Every detail is set out in the Immigration and Nationality Act for the federal government, not state and local law enforcement.

Finally, as a member of the Select Committee on Homeland Security, I am very concerned that the Department of Homeland Security will become so bogged down in answering calls from local law enforcement about non-criminal immigrants that they will be diverted from their primary mission - protecting us from terrorism.

These are just some of my concerns with the CLEAR Act. I have many others, from the overload on the National Criminal Information Center (NCIC) database to the high potential for profiling this bill will create.

This is a terrible bill that will have reverberating effects not only on immigrants around the country, but also on our national security, and the ability for our local law enforcement to keep us safe. I hope members on this Subcommittee will listen to the experts and oppose the CLEAR Act."

## PREPARED STATEMENT OF CONGRESSWOMAN LINDA T. SÁNCHEZ

Thank you, Chairman Hostettler and Ranking Member Jackson Lee for convening this important legislative hearing today to hear testimony on H.R. 2671, the "Clear Law Enforcement for Criminal Alien Removal Act of 2003" commonly known as the CLEAR Act.

I believe that the CLEAR Act is one of the most dangerous and potentially damaging bills this Subcommittee has considered. The CLEAR Act is detrimental to our police departments, the safety of our immigrant and non-immigrant communities, and our national security.

## CLEAR ACT BURDENS STATE LAW ENFORCEMENT AGENCIES AND BUDGETS

The CLEAR Act puts a substantial burden on the state and local law enforcement agencies, state and local budgets, and taxpayers.

The CLEAR Act will require state and local law enforcement agents to be police officers, first responders, and immigration agents. America's state and local law enforcement agencies have their hands full fighting crimes and keeping our streets safe. Since the terrorist attacks of 9/11, state and local law enforcement agents have been given the added responsibilities of being "first responders," our first line of defense against a terrorist attack. The CLEAR Act adds to these substantial burdens the responsibility of enforcing federal civil immigration laws. This is no easy task. To properly enforce federal immigration laws, police officers will have to be knowledgeable of subjects like H-1B visas, asylum, and Temporary Protected Status. It takes Federal immigration agents 17 weeks of training to learn the basics of these subjects, not to mention the time it takes to understand the thousands of nuances of federal immigration law.

The CLEAR Act will also make it much more difficult for state and local law enforcement agents to protect the communities they serve. Turning police officers into immigration agents will destroy trust, cause many immigrants to avoid contact with law enforcement agents, and deter immigrants from helping with criminal investigations. The fear of being imprisoned or deported will cause victims, witnesses, or concerned citizens in immigrant communities from contacting police officers with information about crimes. This fear may prove to be a slippery slope and result in immigrants not informing fire departments and emergency rescue personnel of emergencies.

This is a concern that has been repeated by law enforcement agencies across the country. For example, the California Police Chiefs Association, Inc. recently said in a letter to Senator Dianne Feinstein:

The proposed CLEAR Act . . . undermines the fundamental partnerships that our police agencies have with their communities. That partnership is essential to effective law enforcement. The CLEAR Act effectively will turn our police officers into immigration agents. The unintended consequence of this bill will be to chill the willingness of immigrants to come forward and report crimes or other suspicious activities.

The result of the CLEAR Act will be to set back years of community policing efforts and attempts by law enforcement agencies to build goodwill in the community. The CLEAR Act, therefore, makes communities less safe, not more safe.

Additionally, the CLEAR Act makes communities less safe because it diverts law enforcement resources away from criminal investigations and arrests, and misdirects those resources to investigations of administrative or civil immigration violations.

## THE CLEAR ACT REQUIRES NO POLICE TRAINING ON IMMIGRATION LAW

While the CLEAR Act gives state and local police officers the added responsibility of enforcing federal immigration laws, it does nothing to ensure the officers will be adequately trained to enforce those laws. Under Section 109(a) of the CLEAR Act, within 180 days of enactment the Attorney General or the Secretary of the Department of Homeland Security are required to develop a training manual to teach state and local law enforcement personnel about how to enforce federal civil immigration law. However, the training is not mandatory. Under Section 109(d) of the CLEAR Act, the "Clarification" provision, states and localities are not required to take any immigration training courses as a prerequisite to enforcing immigration laws. Specifically, section 109(d) says, "Nothing in this Act or any other provision of law shall be construed as making any immigration-related training a requirement for or prerequisite to any State or local law enforcement officer to enforce Federal immigration laws in the normal course of carrying out their law enforcement duties."

As a further obstacle to training state and local police officers on immigration law, Section 109(b)(1) of the CLEAR Act allows the Attorney General or the Secretary of DHS to charge states and localities a fee of up to 50% of the total cost to acquire the training manuals.

#### PENALIZES STATES FOR NON-COMPLIANCE

The CLEAR Act strikes another blow to state and local law enforcement efforts imposing severe penalties for non-compliance. While the CLEAR Act does not explicitly mandate that states enforce federal immigration laws, states that refuse to do so will lose their federal funding. If a state does not pass legislation within two years of enactment of the CLEAR Act explicitly authorizing law enforcement agents to enforce immigration laws, the state will lose funding under § 241(i) of the Immigration and Naturalization Act. States will also lose funding under § 241(i) if they do not give background information about apprehended illegal aliens to the Department of Justice and the Department of Homeland Security.

The loss of federal funding will be very damaging for many states, including my home state of California. While the CLEAR Act increases appropriation for the SCAAP programs, it fails to change the formula for allocating funds. Under the new formula, states are only reimbursed for the costs of incarcerating unlawful immigrants who are convicted of a felony or two misdemeanors. The result of the CLEAR Act will be for California to lose all funding if they fail to comply, or continue to lose a substantial percentage of their SCAAP funding.

#### THE CLEAR ACT IS A DANGER TO CITIZENS AND IMMIGRANTS

The CLEAR Act makes the penalties for immigration violations more severe. Under the Act any non-citizens who are present in the United States will be fined, imprisoned for one year, or possibly both. The non-citizen will also be subject to forfeiture of all of their assets.

By far the most dangerous provision of the CLEAR Act for the immigrant community is § 110 which grants law enforcement agents immunity from civil lawsuits as long as they act within the scope of their duties. This provision gives law enforcement agents carte-blanche to engage in widespread racial profiling. Granting police officers immunity from civil lawsuits will no doubt result in some detentions and arrests based solely on an individual's external ethnic appearance or the fact that they speak with an accent. American citizens and lawful immigrants alike will have no legal recourse when their civil rights are violated because officers will have total immunity.

Furthermore, the CLEAR Act rewards states and localities for enforcing immigration laws by giving states half of the civil penalties or assets seized from apprehension of illegal aliens, as well as federal grants for equipment, technology, facilities, administrative costs, and incarceration costs

#### THE CLEAR ACT HINDERS NATIONAL SECURITY

The CLEAR Act is also an obstacle to protecting our country from dangerous criminals, as opposed to immigrants who have overstayed their visa. The CLEAR Act undermines the purpose and usefulness of the National Crime Information Center (NCIC) database. The NCIC database is meant to be a tool used by the Federal Bureau of Investigation and local law enforcement agencies as a central information sources for wanted persons, persons with outstanding warrants, or other wanted criminals. Under the CLEAR Act, the Department of Homeland Security is required to provide NCIC with information on *any* person who has violated Federal immigration law. This includes civil and administrative immigration law violations. The result will be that potentially millions of people with minor immigration violations will be added to the NCIC. This result would be counterproductive to the NCIC's purpose of finding criminals.

The CLEAR Act is also a setback to national security because it diverts Department of Homeland Security personnel and funds away from investigating and apprehending terrorists to processing civil immigration violations. The way to make our country secure, and prevent another terrorist attack is by investigating and arresting terrorists not immigrants. Immigrants and terrorists are not the same thing.

#### CONCLUSION

Mr. Chairman and Ms. Ranking Member, I look forward to hearing the testimony of our witnesses today. I hope they can address the many concerns that I share with

police departments across the country and immigration advocates about the dangers of the CLEAR Act.

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PREPARED STATEMENT OF THE HONORABLE CHARLIE NORWOOD

Thank you Mr. Chairman on holding this hearing today. I appreciate the opportunity to present the CLEAR Act to the Subcommittee and enter a discussion about the criminal alien crisis in our country.

Sometimes in this job, it only takes one story to spark a fire in your belly and drive you to change the system. In this case, there are many stories to share, but let me share one story that really hits home for me.

Miguel Angelo Gordoba is a child molester and illegally in our country. In August 2001, he finished a four-year sentence at Rivers State Prison for molesting a 2-year old girl in Alma, Georgia. On the day he finished his sentence you would think he would be picked up and deported. As unbelievable as it sounds, the INS, now the Bureau of Immigration and Customs Enforcement, didn't have his paperwork done. Subsequently, Mr. Gordoba registered as a sex offender, but when the county sheriff went to the listed address to check in on him, all he found was a vacant lot.

Mr. Gordoba is one of 80,000 criminal aliens with standing deportation orders that are on the loose within our borders.

When the *Atlanta Journal Constitution* printed an article on Mr. Gordoba late last year, I said that I would introduce legislation to empower law enforcement officials to help the INS "crack down on this problem." That, ladies and gentleman, is what my colleagues and I are here today to present to you.

But before we dive into the details of the bill, let me establish some facts.

There are upwards of 400,000 individuals who have received final deportation orders that are hiding in our communities. Their appeals have run out, and those orders tell them, "it's time to go." But, the Bureau of Immigration and Customs Enforcement can't find them! What's worse, 80,000 of those people have criminal convictions, just like Miguel Angelo Gordoba! They were in the hands of our law enforcement. Can you imagine opening the doors of our prisons and letting 80,000 criminals run back into the streets? Well folks, that's exactly what has happened with these 80,000 criminal aliens. What's more, 3,800 of those people with final deportation orders are from countries with a known Al-Qaeda presence.

Let me say up front that I respect the new leadership at the Department of Homeland Security and appreciate the fact that they are acknowledging the INS' past mistakes. But there is no way the 2,000 agents they have assigned to find some 400,000 people can get the job done. They need help from the folks who come across these people everyday during routine traffic stops and during other activities in the course of their regular duty - police officers. In fact, Assistant Secretary of BICE, Michael Garcia, has agreed with this concept.

Right now if a local officer in Augusta during the normal course of his duty pulls over a car for say . . . speeding, with someone who is illegally in our country, they have to call the Bureau of Immigration and Customs also referred to as BICE, verify their status, and wait until someone from BICE comes to pick them up. Sometimes they have to wait for hours on the roadside for the pickup to arrive. But most of the time BICE says they are too busy to come by and they tell the police to let the lawbreakers go. Unbelievable . . . and that's just the tip of the iceberg.

This landmark legislation has 10 steps to securing our streets. These steps are focused on clarifying authority, providing vital information to our law enforcement, and supplying them with additional resources to do their jobs. Allow me to briefly run through some of the major highlights.

First and foremost, this bill will clarify that state and local officers have the inherent authority to arrest and detain criminal and illegal aliens during the course of their regular duty. We are a nation of laws and it is just plain common sense to allow these officers to enforce all the laws.

Each locality and state has a choice if they want to enforce immigration laws. If a locality decides to enforce immigration laws, they will have access to \$2.6 billion in federal funding, which they desperately need. If they chose not to, they will not be eligible for the \$1 billion grant program created by the bill or any State Criminal Alien Assistance Program (SCAAP) funding. If a locality sticks its nose up at a set of federal laws, why on earth should they get federal funding to house the very criminal aliens they choose to harbor?

We are also going to create a new category within NCIC, the National Crime Information Center database, for immigration lawbreakers. This is the most accessible database that police officers have at their disposal; in fact, they can access it from

their patrol cars. The goal is to provide them with readily accessible information on all lawbreakers literally at their fingertips.

All of this clarified authority is going to require more funding, training, and equipment. We certainly recognize that in this bill and have provided for a new grant program and training program to name just a few of the additional resources.

One of the biggest complaints we heard from police officers in the field is how uncooperative BICE can be. Not anymore. . . . This bill allows state and local police to hold truly uncooperative federal agencies accountable by setting up an unprecedented administrative review process and fine schedule.

Finally, and perhaps most importantly, we are going to ensure that from the time a local officer detains a criminal alien, there are no gaps between that moment, the criminal serving their time in prison - if any, and their deportation from the country. We are going to do that by expanding the Institutional Removal Program. Currently a pilot program, the Institutional Removal Program requires that a criminal's deportation orders must be complete by the end of their sentence, and that BICE must pick them up at the prison and put them on a plane the day their sentence is complete. There will be no more individuals like Miguel Angelo Gordoba to worry about.

Critics of this legislation will try to tell you that the CLEAR Act just promotes police abuse. I take great offense to that implication. This was an issue we did much research on prior to writing the bill. For the first time, police will have access to training on immigration laws and how to prevent civil rights abuses. I say to those critics, have some faith in your police. You imply they are just waiting for an excuse to abuse their powers. They deserve more respect than that.

They also claim that the CLEAR Act will break down relations between police and immigrant communities. While I'm certainly sensitive to this vital relationship, I'm confident enactment of the CLEAR Act is not a threat - many other folks who know a great deal about the issue also agree. In fact, Assistant Secretary Michael Garcia of BICE, the agency's number two official, has stated this argument has no grounds. Nor do the members of the endorsing law enforcement groups believe this is a valid argument. The fact is, individuals in all communities, including immigrant communities, want criminal aliens off their streets, that is exactly what the CLEAR Act will do.

Also disappointing is the misconception that the CLEAR Act will scare victims of domestic violence into silence. There is already protection for immigrant victims of domestic violence under the law, it's called the "U" visa, which protects victims, regardless of their immigration status. The legislation that created the "U" visa, was drafted by Leslee Orloff, Director of the NOW (National Organization for Women) Legal Defense Fund. Orloff wrote, and the statute now reads, that the purpose of this new visa is to "strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence while offering protection to victims of such offenses. Creating a new nonimmigrant visa classification will facilitate the reporting of crimes to law enforcement officials by abused aliens who are not in lawful immigration status." This "U" visa gives battered illegal aliens temporary legal status and then lets them obtain a green card after 3 years. While there is current protection under the law for these crime victims, this will certainly be an integral part of the training program provided in the CLEAR Act.

This isn't only legislation that our police need; it's what people across the country want. A March 2003 Roper/ASW poll showed that "85% of Americans agree and 62% strongly agree that Congress should pass a law requiring state and local governments, and law enforcement agencies, to apprehend and turn over to the INS illegal immigrants with whom they come in contact."

The CLEAR Act currently has over 100 cosponsors and is endorsed by a number of law enforcement groups including: the National Sheriffs' Association, Law Enforcement Alliance of America, Southern States Police Benevolent Association, and the Friends of Immigration Law Enforcement.

I thank the Chairman again for holding this very important hearing and hope that we can work together to enact this legislation.

# General Order

## Houston Police Department



SUBJECT: IMMIGRATION

ISSUE DATE: June 25, 1992	NO. 500-5
REFERENCE: Supersedes General Order 500-5, dated January 3, 1990	

### PURPOSE

The purpose of this General Order is to establish the policy of the Houston Police Department regarding illegal aliens.

### 1 BACKGROUND

The City of Houston has attracted many residents from countries outside the United States. A number of these residents are not citizens, are undocumented and live in Houston without legal sanction. The Houston Police Department is committed to the principle that effective law enforcement depends upon good relationships between the Department and the community it serves. As police officers, we must rely upon the cooperation of all persons, including citizens, documented aliens, and undocumented aliens, in our effort to maintain public order and combat crime.

### 2 POLICY

Undocumented alien status is not, in itself, a matter for local police action. Unlawful entry into the United States is not to be treated as an on-going offense occurring in the presence of a local police officer. Houston police officers may not stop or apprehend individuals solely on the belief that they are in this country illegally.

### 3 PROCEDURES

Officers shall not make inquiries as to the citizenship status of any person, nor will officers detain or arrest persons solely on the belief that they are in this country illegally. Officers will contact the Immigration and Naturalization Service (INS) regarding a person only if that person is arrested on a separate criminal charge (other than a class C misdemeanor) and the officer knows the prisoner is an illegal alien.

In keeping with this policy, officers are prohibited from participating in INS raids where the primary purpose is the arrest of persons for their undocumented status. Houston police officers will assist INS agents on criminal matters of mutual concern, but only when requested and only in situations in which the involved Houston police officers will be clearly exercising their police powers under the laws of the State of Texas. Even in these limited circumstances officers shall obtain authorization from an Assistant Chief prior to participation.

  
Sam Nuchia  
Chief of Police



Questions for Mayor Pro Tem of Houston Gordon Quan  
Per the Honorable Charlie Norwood  
October 1, 2003

- 1.) Do you believe the nation should enforce its laws?
  - 2.) Do you believe immigration laws of this country should be enforced?
  - 3.) Does that mean we should put a stop to people sneaking across our border?
  - 4.) Do you believe that the 400,000 illegal aliens that have been through our immigration courts and been ordered to leave should be made to leave?
  - 5.) Would you agree that the 80,000 that are violent criminals and the 3,700 that are from al-Qaeda friendly countries, especially, should be deported?
  - 6.) Do you believe that a closer partnership between federal immigration authorities and local police would help improve the enforcement of immigration laws?
  - 7.) I am told that your policy in Houston restricts your officers from contacting the Bureau of Immigration and Customs Enforcement (BICE) if an alien has been arrested for a class "C" misdemeanor such as a traffic violation.
    - a.) Does your Police Department General Order 500-5 state that it is illegal to cross our border without inspection, but if you can just cross the boarder you are not illegal only illegal during the minutes it takes to cross the border?
    - b.) Are you aware that it is illegal, under federal law, for localities to prevent local agencies and officers from contacting INS or ICE about an illegal alien's status?
  - 8.) Mr. Quan, if a city chooses to stick their nose up at federal immigration laws, why on earth should they receive federal funding to house the very criminal aliens they chose to harbor? Such as Houston....
  - 9.) The entire focus of the CLEAR Act is to make our streets safer and protect individuals from becoming crime victims and remove terrorists.
    - a.) Mr. Quan I'd like to tap your 26 years of immigration law experience, will you please explain to us what the "U" visa is?
    - b.) Don't you think it's important that we take the opportunity to educate police officers and victims of domestic violence about the protections they have right now under the "U" visa? I would make this a priority in the police-training program under the CLEAR Act. It's a crime that interest groups are trying to intimidate victims and not telling them about the "U" visa.
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Questions for Mayor Pro Tem of Houston Gordon Quan  
Per the Honorable Charlie Norwood  
October 1, 2003

1. Do you believe the nation should enforce its laws? **Those who make laws should provide proper resources and training of officers to enforce laws or they merely become illusory.**
2. Do you believe immigration laws of this country should be enforced? **The immigration laws should be enforced by trained immigration officers just as customs, agricultural laws and other federal laws are enforced by federal officers.**
3. Does that mean we should put a stop to people sneaking across or border? **Congress should allocate sufficient funds and resource to control our borders.**
4. Do you believe that the 400,000 illegal aliens that have been through our immigration courts and been ordered to leave should be made to leave? **If these individuals have had their day in court and have been ordered deported, I believe the government should remove them.**
5. Would you agree that the 80,000 that are violent criminals and the 3,700 that are from al-Qeada friendly countries, especially, be deported? **The definition of violent crimes have been expanded greatly in the past few years. I believe that if they have not been found eligible for a waiver based on the decision of an immigration judge, they should be removed. However, just to be from a country that has shown a presence of al-Qeada should not be grounds to condemn all persons from that country.**
6. Do you believe that a closer partnership between federal immigration authorities and local police would help improve the enforcement of immigration laws? **I believe there is a good relationship in general between the local police and federal immigration authorities. Memorandums of Understanding (MOU) may be signed with the federal government if local police feel that greater cooperation was needed. The complaints I have heard are that the federal immigration authorities fail to provide support for the local police and not the reverse.**
7. I am told that your policy in Houston restricts your officers from contacting the Bureau of Immigration and Customs Enforcement (BICE) if an alien has been arrested for a class "C" misdemeanor such as a traffic violation.
  - a) Does your Police Department General Order 500-5 state that it is illegal to cross our border without inspection, but if you can just cross the boarder you are not illegal only illegal during the minutes it takes to cross the border? **We are not a border city. We do not address border crossing issues in our General Order 500-5. How an individual enters the U.S. is beyond our scope of review.**
  - b) Are you aware that it is illegal, under federal law, for localities to prevent local agencies and officers from contacting INS or ICE about an illegal alien's status? **I am aware that preventing local agencies or officers from contacting INS or ICE**

concerning an illegal alien's status is in violation of federal law. Still, such a determination of status needs to be made by the federal government. When an individual commits a crime that is above a Class "C" misdemeanor and is not born in the U.S. we ask INS or ICE to determine the individual's immigration status. We are not equipped to do make this determination.

8. Mr. Quan, if a city chooses to stick their nose up at federal immigration laws, why on earth should they receive federal funding to house the very criminal aliens they chose to harbor? Such as Houston. Presently, we try to cooperate with ICE. Still, we are never fully reimbursed for our expenses. The CLEAR Act will have the effect of making a city weigh whether it remains worthwhile to cooperate since this is a losing venture anyway.

Without full re-imbursement for adequate training, many cities may elect to simply no longer cooperate rather than risk damaging community relations. In difficult financial times, this option becomes even more viable.

9. The entire focus of the CLEAR Act is to make our streets safer and protect individuals from becoming crime victims and remove terrorists. Using your figures, criminal aliens constitute less than 1% of the undocumented persons in the U.S. and persons from al-Qaeda countries less than .4%. At the same time we risk losing cooperation from hundreds of potential informants.

Earlier this year, the federal government conducted a Special Call-in Registration of all non-resident aliens, legal and illegal, from Moslem and Middle-Eastern countries. Hundreds of thousands of men reported, not one was found to have any ties to terrorists.

a) Mr. Quan I'd like to tap your 26 years of immigration law experience, will you please explain to us what the "U" visa is? The "U" visa is relatively new - created in 2001. It makes amendments to the Violence Against Women Act and provides up to 10,000 visas annually for victims of enumerated crimes that occurred in the U.S. The applicant must demonstrate that he or she:

- Suffered substantial physical or mental abuse as a result of having been a victim of an enumerated crime, including rape, torture, trafficking, incest, domestic violence, sexual assault, female genital mutilation or prostitution;
- possesses information on the crime; and
- is being or has been helpful in the investigation or prosecution of the crime.

As of June, no regulations have been issued by DOS or DHS.

b) Don't you think it's important that we take the opportunity to educate police officers and victims of domestic violence about the protections they have right now under the "U" visa? I would make this a priority in the police-training program under the CLEAR Act. It's a crime that interest groups are trying to intimidate victims and not telling them about the "U" visa. Education is always important. Currently, we are educating immigrant communities on employment rights and our Office of Immigrant and Refugee Affairs will educate the community and the police department once regulations have been promulgated. Similar programs have been conducted for Special Registration and Temporary Protected Status.

JAMES R. EDWARDS, JR., ADJUNCT FELLOW, HUDSON INSTITUTE

ADDITIONAL RESPONSES TO QUESTIONS REGARDING H.R. 2671, THE CLEAR ACT, FROM  
OCTOBER 1, 2003, HEARING OF THE HOUSE IMMIGRATION SUBCOMMITTEE

REPLY TO REP. SANCHEZ REGARDING THE IMMUNITY PROVISIONS:

The immunity provisions of the CLEAR Act are carefully crafted to protect both individual police officers and law enforcement agencies against predatory or intimidation lawsuits. At the same time, the provisions of Section 110 safeguard the individuals taken into custody pursuant to enforcement under the CLEAR Act. Subsection (a) grants police officers legal immunity from personal liability for enforcing immigration law violations within their official duties. It would relieve police officers from being subject to lawsuits against them as individuals simply for doing their jobs.

The immunity under this subsection extends solely to lawful police work; an officer who abused his authority, committing a crime as he acts under color of law, would not be immune from prosecution for that offense. The "if" clause is key: "... if the officer is acting within the scope of his or her official duties." This language would by implication exclude abuses of power while acting under color of law. This is the same legal protection afforded anyone else in custody of officers of the law.

However, for doing his job in compliance with his training and the standards and practices of law enforcement, a law officer would be free from worrying that he might be sued for the purpose of intimidation and harassment by the likes of marauding lawyers who use litigation and the threat of litigation as a weapon to advance a political agenda. Police officers who faithfully do their jobs, which are stressful and dangerous enough already, would not have to fear being sued, bankrupted, and having their lives put through the ringer when they did nothing wrong.

Subsection (b) grants state and local police departments legal immunity from claims for monetary damages in connection with immigration enforcement. This provision holds law enforcement agencies immune from the kinds of lawsuits intended to intimidate, bleed public resources, and ultimately dissuade police from acting under the CLEAR Act. This immunity preserves policymaking for the appropriate, democratic arenas, not the courts.

However, the immunity language provides an exception to the departmental immunity when one of its police officers commits a criminal offense during the enforcement of immigration violations. In the case of overzealous officers, both officer and department would face liability, the officer criminal and his department civil. Therefore, lawfulness is upheld, and the essential rights even of illegal aliens in the custody of an American police agency are protected.

This section of the bill achieves a necessary and proper balance. It protects police officers and the departments they work for from unfounded, but expensive and debilitating liability litigation (or the threat thereof), while also protecting the subjects of enforcement actions from being unlawfully mistreated by any police officers who would abuse and misuse the public trust and break the law they are sworn to uphold.

REPLY TO REP. HOSTETTLER REGARDING CLEAR ACT REQUIREMENTS UPON  
STATE AND LOCAL LAW ENFORCEMENT:

The CLEAR Act requires very little of state and local law enforcement officers and agencies that they are not already doing. The only new thing that all state and local police departments would have to do, regardless of their policies one way or the other toward immigration offenses and immigrants, would be to share intelligence. This would be part of fostering two-directional information sharing concerning the illegal and criminal aliens with whom law officers of a police agency come into contact. Beyond this minimal information sharing, the legislation mandates nothing. The rest of the bill contains financial incentives for enforcing federal immigration law, which state and local law enforcement already has the inherent legal authority to do and most police officers and agencies across the country seek to do.

Further, this information-sharing measure is not an unfunded mandate. Those police agencies whose policy does not restrict their officers from enforcing immigration violations or from cooperating with federal immigration authorities would qualify for certain federal funds, under the bill. Those funds would help cover any additional costs of complying with Section 105. However, insofar as police officers already create records of their traffic stops, encounters with suspects, and the like, this provision would involve little more than providing that information already in hand to federal authorities, making them aware of such routine encounters where criminal and illegal aliens are involved. It essentially requires no more than the timely shar-

ing of information about certain aliens encountered during normal police work - information already largely collected and on hand.

Beyond timely information sharing, which is vital to increasing the chances of capture in another jurisdiction and at helping identify trends in immigration violator behavior, state and local law enforcers would bear no new requirements. They would now receive cooperation from federal immigration authorities instead of the cavalier "let them go" response. State and local police would have flexibility in how and when they detain, house, transport, and hand over custody of illegal criminal aliens to federal authorities. They would have to attend to all these aspects of law enforcement anyway, and now would receive federal reimbursement - or rapid responsiveness - in cases involving illegal criminal aliens for the associated costs of law enforcement, which already fall most heavily on localities.

The only other requirement of state and local law enforcement would be to abide by the law and display standards of professionalism in the handling of cases involving illegal and criminal aliens. Otherwise, they would risk losing the CLEAR Act's limited grant of legal immunity. However, requiring professionalism and lawful conduct of police work is no new requirement at all.

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in local custody. "We must use all lawful means to prevent terrorism," he said. "There are no second chances."<sup>1</sup>

Indeed, this is the most sensible next step in enforcing immigration laws, not only against Islamist terrorists and their immigrant sympathizers, but concerning immigration lawbreakers of every sort. After all, about 96 percent of all U.S. law enforcement officers work for state and local departments.<sup>2</sup> In 1999, there were about 678,000 state and local police, according to the Justice Department. Their involvement in immigration enforcement would be a tremendous force multiplier.

**Frequent Contact.** Furthermore, state and local police often come into contact with illegal aliens as officers go about their duties. For example, September 11 ring-leader Mohammed Atta, while guilty of overstaying an expired visa, was ticketed in Broward County, Fla., in the spring of 2001 for driving without a license. His accomplice, Ziad Samir Jarrah, received a speeding ticket from a Maryland state trooper two days before the terrorist attack.<sup>3</sup>

And such encounters are an everyday occurrence involving illegal aliens not belonging to Al Qaeda. For instance, a sheriff's deputy in Tulsa, Okla., stopped a van on Interstate 244 the night of July 17, 2002, because it was missing a taillight. The deputy found 18 Mexican illegal aliens in the van.<sup>4</sup>

Police in New York pulled over a battered van on the Manhattan side of the Brooklyn Battery Tunnel the Friday of Memorial Day weekend 2002, just as the Office of Homeland Security issued a terrorism alert. They found seven illegal aliens from the Middle East, with a host of identification documents — one was a fake card obtained in Times Square, another a phony passport.<sup>5</sup> Highway patrolmen in Rogers County, Okla., arrested seven Latino illegal aliens August 5, 2002, on alcohol and drug misdemeanors. They had taken an illegal turn.<sup>6</sup>

Thus, because local police officers routinely encounter illegal aliens of all types, to involve local lawmen in keeping a lookout for immigration violations within U.S. borders makes common sense.

However, three general, practical problems limit the degree to which state and local police authorities are involved in enforcing immigration law. An additional barrier has more to do with attitude than practicality.

Generally, police at the local level often lack clarity about the extent of their authority concerning immigration law. Also, police officers on the beat lack

timely access to specific information about aliens with whom they come into contact — revealing whether or not they have a lawbreaker on their hands. And then there is the practical constraint of limited resources — jail space, sufficient funds to hold aliens or transport them to the immigration service, and so forth.

## Confused About Authority

Though state and local police officers have the legal authority to enforce federal immigration laws (this is explored more fully in the following section), officers may not realize this. Some people have tried to create a perception of an arbitrary distinction between immigration and other federal laws, and local officers may be uncertain whether the law or the Constitution grants them authority regarding immigration offenses; however, police at the local level often make arrests for other federal offenses.

They may not know whether an illegal alien has committed a criminal immigration offense or not, but most immigration offenses, such as entry without inspection, fraud, and alien smuggling, are felonies. Gray areas exist, however. For example, to enter the country by sneaking across the border is punishable under the federal criminal code (INA Sec. 275), while overstaying a temporary visa is but a deportable offense (INA Sec. 237(a)(1)(C)(ii)).

Police officers also may hesitate to scrutinize a suspect too closely for fear of being charged with racial or ethnic discrimination. Such lawsuits as that won against Chandler, Ariz., in 1997, when police questioned about 400 people for proof of citizenship, can have a chilling effect on local law enforcement's getting involved in immigration matters.<sup>7</sup>

Federal authorities do not help the situation any when they add to the confusion. For example, an INS deputy district director in Georgia was quoted, "It's not a crime to be in the U.S. illegally. It's a violation of civil law."<sup>8</sup> An INS spokesman in California referred to aliens unlawfully present as "law-abiding citizens" (they are neither).<sup>9</sup> Such statements, though clearly wrong, serve to muddle local law enforcement's understanding of what the immigration code says and how they should handle suspected violations.

Liberal activists, such as the American Civil Liberties Union, and other high-immigration advocacy groups employ intimidation tactics to dampen local law enforcement's inclination to exercise its authority in immigration matters. For example, the ACLU promptly used this tactic when a Stratford, Wis., policeman arrested an erratic driver who was a Mexican

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Because local police officers routinely encounter illegal aliens of all types, to involve local lawmen in keeping a lookout for immigration violations within U.S. borders makes common sense.

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alien. This led to the officer's discovery of five other illegal aliens, whom the policeman questioned about their immigration status, resulting in four being removed from the country.<sup>10</sup>

All told, such a situation causes many local law enforcement agents to forego, or at least second-guess, their authority over immigration violations.

### Information Is Empowering

Police officers on the beat must have timely information about lawbreakers and fugitives to enforce the law effectively. To help them, the National Crime Information Center (NCIC), maintained by the Department of Justice, lists such information as outstanding warrants and fugitives. This powerful source supplies law officers with ready access to information in a quick, single inquiry and has become part of standard police procedure and Information Age crime-fighting culture.

Unfortunately, NCIC contains few records pertaining to immigration offenses. Only in 2002 did the Department of Justice begin listing absconders on NCIC. Absconders, those who have not left the country under final order of removal, make up an estimated 314,000 of the eight to 10 million illegal aliens. Only a fraction of the total number of absconders has yet been entered on the NCIC database, beginning with Middle Easterners.<sup>11</sup>

The Bureau of Immigration and Customs Enforcement (BICE, formerly the INS) operates the Law Enforcement Support Center (LESC) to assist local law officers. The LESC provides local police with access to BICE data on immigration violators. However, accessing LESC requires a secondary contact in addition to NCIC. LESC checks take much longer to get an answer, perhaps two or more hours (BICE claims most are answered within 20 minutes). It hasn't been available to police in all 50 states and is not part of the law enforcement culture.

Post-September 11, though, information-sharing is on the rise. State and local law enforcement — among the "first responders" — are being brought increasingly into the picture of homeland security. The State Department is making available to local law en-

forcers its database of sensitive information about overseas applicants for American visas. This database contains records on some 50 million visa applicants and has 20 million photographs.<sup>12</sup> Yet, as useful as this move is in providing detectives nationwide with this investigative tool, it will not be as useful to the officer on the beat for getting quick answers.

### More Resources Needed

As with most government agencies, state and local law enforcement departments must cope with limited resources. Most police agencies could always do with more money, more personnel, more equipment, more jail space, and so forth. The same holds when it comes to immigration enforcement.

Local jails may serve as detention space for holding illegal aliens. This gives the BICE additional bedspace where illegal immigrants may be kept following the time local police have captured them and until immigration officers take custody. This short-term custody of illegal aliens is a built-in stopgap measure.

But detaining illegal aliens, even for only a short time, can become costly. And the cost is borne principally at the local level. A 2001 study by the U.S./Mexico Border Counties Coalition estimated the annual cost of law enforcement and criminal justice associated with illegal immigration in those Southwest counties alone at \$108.2 million in 1999, or 12 percent of the cost of these counties' related expenditures.<sup>13</sup>

The State Criminal Alien Assistance Program (SCAAP), through which the federal government reimburses a portion of the cost of locally detaining illegal aliens, does not come close to the full amount. One Arizona sheriff said SCAAP pays 23 cents for every dollar an illegal immigrant imposes on his county jail. And Sen. Jon Kyl, (R-Ariz.), said his state spent \$305 million housing illegal aliens in 2002, while the federal reimbursement was only \$24 million.<sup>14</sup> SCAAP received just \$585 million in total funding in 2002, and Congress appropriated just \$250 million in the new 2003 spending bill.

Similarly, the costs that aliens impose on American prisons are high. A private analysis found the cost of incarcerating aliens in state and federal facilities was \$849.1 million in 1999. It said 54 percent of federal inmates were aliens, while about 5 percent of state inmates were immigrants. The North Carolina legislature has passed a new law allowing alien prisoners to be transferred to their home country's prison, which could save state taxpayers an estimated \$3.55 million each year.<sup>15</sup>



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**Other Burdens.** In addition to the financial burden that jailing aliens places on state and local detention facilities, other burdens exist that serve to exclude many local jails from being used at all. According to congressional research, BICE regulations require that any county or municipal jail where aliens are detained must meet absurd, unreasonable standards. These requirements make little sense in most American counties and far exceed the American Correctional Association standards, which 21,000 jail facilities meet.

BICE standards say aliens must have access to law books in their own language. Activist lawyers and advocacy groups must have access to inform detainees about U.S. immigration law and procedures. The BICE rules dictate two hot meals per day, micromanage the contents of cold meals, and demand consideration of detainees' ethnicity in meal planning. Further, the standards require detainee access to resources, services, instruction, and counseling in their religion. The intent of such requirements is to diminish the use of local jails for detaining illegal aliens.

Though the Immigration and Nationality Act provides for civil penalties to be assessed against illegal aliens for many offenses, the general practice of the federal government is to forego assessing fines. That is, the lawbreaker receives virtually no punishment for getting caught for his crime. This means that if an illegal alien is caught, the worst that he or she receives is free transportation home.

The net effects of all this are that lawbreakers suffer no consequences and state and local police are burdened with heavy costs and regulations. Ultimately, state and local taxpayers bear the heaviest costs associated with taking immigration lawbreakers off their streets. Whereas with enforcing drug laws local law enforcement may gain resources — such as the forfeited assets of drug dealers — local police usually get nothing for helping in immigration enforcement.

### Attitude Is Everything

Perhaps most detrimental to keeping state and local police sidelined in the battle to secure the homeland is attitude. Some localities adopt policies that constrain police from enforcing immigration law (more on this in the following section). The attitude is, immigration is the federal government's job, not ours. Still, those localities that do wish to exercise their authority in this arena are often met with what appears a lackadaisical, uncooperative attitude from immigration authorities.

The perception among many in law enforcement is that the INS, now BICE, lacks the will to help them enforce immigration law. After Attorney General Ashcroft's appeal for the help of local police regarding aliens, Billings, Mont., Police Chief Ron Tussing's response was not atypical: "Tussing said his past experience with immigration agents makes him skeptical of the new program. Before he was chief of police in Billings, Tussing was superintendent of the Nebraska State Police where officers often encountered illegal immigrants.

"We'd call them (INS) up and they'd say let them go, we're too busy," Tussing said.<sup>16</sup> Indeed, the two instances of Oklahoma officers encountering illegal aliens in traffic stops in the summer of 2002, as well as the New York encounter with illegal aliens before Memorial Day 2002, each involved local law enforcement contacting INS and being told INS could not come take custody of the aliens. Similarly, INS officers in Dallas released 25 illegal aliens into the United States after they were caught being smuggled into this country in a tractor-trailer.<sup>17</sup>

The perception INS has created has sparked indignation among many officials, including members of Congress. For example, U.S. Rep. John Sullivan (R-Okla.) met with INS seeking greater support for local law enforcement in such instances.<sup>18</sup> Kittery, Maine, Police Chief Edward Strong became concerned when his department stopped Bulgarian and Colombian visa overstayers, contacted the INS, and was told to release them. Strong held a press conference on October 30, 2002, at which he said "his department often arrests illegal immigrants at the outlet malls for shoplifting and other offenses. These people are turned over to INS, but only to be released."<sup>19</sup>

**Little or No Help.** Northampton County, Pa., District Attorney John M. Morganielli has cited the INS as being grossly uncooperative in going after immigration violators. "Unfortunately, while the influx of illegal aliens continues at full throttle, as a local prosecutor I can honestly say that there is little to no help from the federal government concerning this issue," Morganielli said. He told of a case involving 12 illegal aliens committing identity fraud using Social Security numbers. Yet immigration agents "discourage this type of investigation," he said.<sup>20</sup>

One of the most prominent cases that further cemented INS's poor reputation was that of Lee Malvo, who was arrested in the Washington, D.C., sniper case. An illegal alien from Jamaica, Malvo and his mother

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— also an illegal alien — were encountered by local police in December 2001. Uma Saeon James and John Mohammed were disputing who had custody of Malvo. Police called the Border Patrol, whose agents in Bellingham, Wash., arrested the illegal aliens. The Border Patrol handed James and Malvo over to INS with the understanding INS would hold them in detention until removal, which is what the law requires. However, the INS violated the law and regulations and released the illegal alien pair, who indeed fled.<sup>21</sup>

The INS has consistently fallen behind in its enforcement mission, borne out systematically as well as illustrated in anecdotal evidence. The Justice Department Inspector General recently examined how well INS had improved its performance removing aliens under final order of removal (formerly deportation) and found that the INS had made virtually no progress. Of aliens under final order of removal whom the INS held in detention, the removal rate was 94 percent in 1996 and 92 percent in 2001 (though the fall might possibly be explained by a small sample size). But of aliens under final order of removal who were not detained, the INS removed only 13 percent in 2001 (11 percent in 1996).<sup>22</sup>

Within specific categories of aliens, the Inspector General found INS removed only 6 percent of nondetained aliens from nations that sponsor terrorism. Only 35 percent of nondetained criminal aliens — a class the INS claimed was its first priority for removal — actually got removed. INS failed to remove 97 percent of non-detained removable aliens whose asylum claims were denied, including terrorists and other criminals, such as Hesham Mohamed Hedayet, the Los Angeles Airport gunman of July 4, 2002, Sheik Omar Abdel Rahman, a leader in the 1993 World Trade Center bombing, and Ramzi Yousef, the 1993 World Trade Center mastermind.<sup>23</sup>

**Very Few Officers.** As much as INS has contributed to its own disrepute, the agency is not entirely to blame. For one thing, the understaffed enforcement side (now combined with Customs and other federal law enforcers in the new Department of Homeland Security) has very few officers to deploy — only about 2,000 for the entire nation. And those are mostly investigators, skilled agents who concentrate on complex cases, such as alien smuggling rings, fraud schemes, and the like. From the standpoint of the best use of limited resources, it does not make sense to pull the equivalent of a detective off his investigation in order to drive across the state and take custody of what may appear to be plain old illegal aliens.

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"Unfortunately, while the influx of illegal aliens continues at full throttle, as a local prosecutor I can honestly say that there is little to no help from the federal government concerning this issue."

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INS has been cooperative with local law enforcement when it has special resources available. For example, the late 1990s saw the development and congressional funding of Quick Response Teams (QRTs). The job of QRTs is to assist state and local law enforcement agencies in immigration cases. This has been a welcome addition to interior enforcement.

And the Atlanta District INS office established a partnership with law enforcement in Dalton, Ga., in 1995. It successfully coordinated investigations, arrests, and removals of illegal aliens and disrupted the criminal and documentation counterfeiting enterprises that facilitated illegal immigration in Whitfield County.<sup>24</sup>

Part of the INS problem is the continuation of Clinton-era policies that undermine any rigorous enforcement of immigration law. Then-INS Commissioner Doris Meissner, in a November 17, 2000, memorandum that established a lax policy, defined "prosecutorial discretion" in such a way that district personnel were discouraged from being tough on immigration crimes. The memo laid out a game plan for deciding not to proceed at every step in the process. It reads, in part:

*"In the immigration context, the term [prosecutorial discretion] applies not only to the decision to issue, serve, or file a Notice to Appear (NTA), but also to a broad range of other discretionary enforcement decisions, including among others: Focusing investigative resources on particular offenses or conduct; deciding whom to stop, question, and arrest; maintaining an alien in custody; seeking expedited removal or other forms of removal by means other than a removal proceeding; settling or dismissing a proceeding; granting deferred action or staying a final order; agreeing to voluntary departure, withdrawal of an application for admission, or other action in lieu of removing the alien; pursuing an appeal; and executing a removal order. ...*

*"As a general matter, INS officers may decline to prosecute a legally sufficient immigration case if the Federal immigration enforcement interest that would be served by prosecution is not substantial.*

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*[emphasis in original] . . . A [district director's] or [chief patrol agent's] exercise of prosecutorial discretion will not normally be reviewed by Regional or Headquarters authority.*

...

*[I]mmigration violations are continuing offenses that, as a general principle of immigration law, continue to make an alien legally removable regardless of a decision not to pursue removal on a previous occasion. An alien may come to the attention of the INS in the future through seeking admission or in other ways. An INS office should abide by a favorable prosecutorial decision taken by another office as a matter of INS policy, absent new facts or changed circumstances. However, if a removal proceeding is transferred from one INS district to another, the district assuming responsibility for the case is not bound by the charging district's decision to proceed with an NTA, if the facts and circumstances at a latter stage suggest that a favorable exercise of prosecutorial discretion is appropriate.<sup>70</sup>*

In other words, the Meissner doctrine sought to undercut congressional intent in the landmark 1996 immigration reform law. The memo provided a plethora of ways and opportunities for immigration field officers not to pursue illegal aliens, signaled that they should exercise "prosecutorial discretion" freely, and directed that prior decisions not to prosecute an alien further insulate that alien from future prosecution.

And, of course, the government is overwhelmed by the sheer volume of aliens, legal and illegal, present in the United States. Numbering in the tens of millions, lawful permanent residents, legal temporary visitors, and illegal aliens of every kind far exceed the government's ability to ensure that they abide by the law and their visa terms, and otherwise pose no threat.

### Legal Authority

State, county, and municipal law enforcement officers are sworn to uphold the law. This includes upholding the U.S. Constitution and implies federal laws. As a 1996 Department of Justice legal opinion put it, "It is well-settled that state law enforcement officers are permitted to enforce federal statutes where such enforcement activities do not impair federal regulatory interests."<sup>71</sup> The current Justice Department Office of Legal Counsel has reportedly read the law and the Constitution even more in accord with the Founding Fathers.

It is important to keep in mind that the states "may be regarded as constituent and essential parts of the federal government," Madison wrote in Federalist 45. The states "retain under the proposed [and adopted] Constitution a very extensive portion of active sovereignty." Federalist 39 makes clear that the U.S. Constitution established a federal, not a national, government.

This element of original intent is essential to understanding the fact that states remain sovereign entities. These sovereigns have broad jurisdiction they may freely exercise. It is worth reviewing the Ninth and Tenth Amendments to the U.S. Constitution, which read, respectively:

*"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.*

*"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."*

In other words, the sovereign states may exercise their active sovereignty.

Except where expressly prohibited from exercising certain powers, the "permission" the Clinton Justice Department's legal opinion mentions that local police have derives from the Constitution itself. States, as federal constituents, retain police powers apart from what any federal statute may designate. This is basic American government.

In April 2002, news reports told of a draft legal opinion under consideration by the Bush Justice Department, apparently premised on this standard reading of the Constitution. *The New York Times* reported that, "The legal counsel's opinion says that states and localities, as 'sovereign entities,' have the 'inherent authority to enforce civil as well as criminal violations of federal immigration law,' according to officials who have read it."<sup>72</sup> DOJ will not make the opinion available, so it is impossible to know exactly how the opinion is reasoned. Unknown remain the rationale, the argument, the cases and authorities, and what constitutes the draft. However, the Attorney General seems to have been advancing the conclusions of the opinion in such things as his 2002 speech to the police chiefs convention.

*The Washington Post* erroneously reported that the draft opinion "would give state and local police agencies the power to enforce immigration laws," a

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power they inherently possess under a proper understanding of the relation of state to federal government and of the U.S. Constitution.<sup>28</sup> The Justice Department seems to be simply (and properly) recognizing this fact.

However, because the 2002 draft opinion has not been published, as a practical matter the published 1996 opinion remains the operative policy until it is superseded by the new one. Of course, states and localities may certainly exercise their authority absent the new opinion's publication, as the Clinton administration's legal opinion does not supplant the Constitution. But bureaucrats and government lawyers aren't known for relying on the actual Constitution when some recent court opinion or policy statement runs to the contrary.

In contrast to the 2002 draft DOJ opinion, the 1996 DOJ legal opinion narrowly read the legal authority of state and local law enforcement as it pertains to federal immigration laws. It said that state and local police "may constitutionally detain or arrest aliens for violating the criminal provisions of the Immigration and Naturalization [sic] Act," but not "solely on suspicion of civil deportability" and could hold criminal alien suspects "for periods as long as 45 to 60 minutes" to allow Border Patrol to arrive.<sup>29</sup>

The Clinton-era DOJ opinion relied heavily on Ninth Circuit decisions. Nevertheless, the opinion did recognize that certain violations in the INA are in fact criminal violations. It further argued that illegal entry may not be a continuing offense (meaning that, once inside the United States, the offending alien has completed his crime, a misdemeanor under INA Sec. 275). This point was based on a Supreme Court case, *INS v. Lopez-Mendoza* (468 U.S. 1032 (1984)). In that case, the Court chose not to address the question of whether the presence of an illegal alien who illicitly crossed the border "is a continuing or completed crime." In addition, DOJ specified that "federal law does not require state law enforcement agencies to assist in enforcing the INA."<sup>30</sup>

**Two Recent Rulings.** Whereas the Ninth Circuit Court of Appeals is not known for sound opinions that respect the rule of law or the Constitution, at least two recent decisions in the Tenth Circuit strengthen the hand of local law enforcement. The U.S. Supreme Court declined to hear an appeal of one of those cases.

In February 1998, an INS agent observed what appeared to be a drug deal outside a restaurant in Edmund, Okla. He called a local police officer and told him what he had seen, as well as suspicion about

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**Federal agents and state and local police must cooperate with one another if the tremendous loopholes that exist are to be plugged.**

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the immigration status of one of the men. The officer investigated, then arrested the Hispanic suspect, a restaurant employee, because of his being an illegal alien. Later on, the officer learned that the alien "had a history of prior criminal convictions and deportations."<sup>31</sup>

The appellate court ruled in *U.S. v. Vasquez-Alvarez* that "statute authorizing state and local law enforcement officials to arrest and detain aliens in certain circumstances if aliens had been deported or had left United States after previous felony conviction did not limit or displace preexisting general authority of state or local police officers to investigate and make arrests of criminal illegal aliens."<sup>32</sup> The court noted Oklahoma's state law as permitting local police to enforce federal law, including immigration law. The Supreme Court denied a writ of certiorari. Thus, while the court rightly affirmed the legal authority of state and local police to arrest and detain immigration violators, it relied on state statute exercising this power explicitly, as well as limiting jurisdiction to criminal violations. Therefore, this decision was in the right direction, but fell short of the vigorous "inherent authority" where civil immigration violations are concerned.

A second case recognized that local police may arrest suspected immigration violators with probable cause of immigration violations. In 2001, the Tenth Circuit held in *U.S. v. Santana-Garcia* that a Utah state patrolman had such probable cause. The officer stopped a vehicle for a traffic violation. The driver, who did not speak English, had no driver's license. In talking with an English-speaking passenger, the officer learned that the two aliens were traveling from Mexico to Colorado. The state trooper asked if the men were legally in the country, and both admitted they were not.

The appellate court said that the officer had probable cause to hold the aliens based on the exchange about their international travel and admission of being illegally present. The court cited the Utah peace officer statute, which grants authority for warrantless arrest for "any public offense."<sup>33</sup> Here again, this court affirmed a state's right to empower its law officers concerning federal immigration laws. But it remains unclear how the court might have ruled absent the traffic violations and related facts.

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**Deputizing Local Police.** One provision of federal law expands the role of local and state law officers by allowing them to be deputized as federal immigration agents. Section 133 of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (INA Sec. 287(a)) is in addition to any inherent or existing state statutory authority over immigration matters. Section 133 allows states or localities and the U.S. Attorney General to enter an agreement. Under such an agreement, a cadre of local or state officers is trained as immigration specialists. That is, the police officers become more or less deputized as immigration officers after undergoing intensive special training.

Florida entered a Section 133 agreement with the Justice Department in 2002. South Carolina and Alabama number among other states that have expressed interest in a similar agreement. Florida trained 35 officers in order that they may work on regional security task forces around the state.<sup>31</sup> In any event, Section 133 arrangements are specialized, rather than general usage of state and local police to enforce immigration laws in the course of their carrying out their duties.

Additionally, Section 372 of IIRIRA grants the Attorney General the authority to call upon state and local police in an immigration emergency. In case "an actual or imminent mass influx of aliens arriving off the coast of the United States, or near a land border, presents urgent circumstances requiring an immediate Federal response," state or local law officers could be granted "any of the powers, privileges, or duties" of a federal immigration officer (INA Sec. 103(a)(8)). The Justice Department has recently changed the rule that implements this provision, waiving or lowering onerous training requirements in certain extreme emergency situations.<sup>35</sup>

**Prohibiting Cooperation.** Finally, whereas states have the power inherently under the Constitution to enforce federal immigration laws, states and localities sometimes adopt policies that limit their own officers' authority in this area. A number of places have enacted such policies. However, to do so violates 1996 federal laws intended to ensure that state and local government personnel assist immigration authorities.<sup>36</sup>

For example, New York City has such a sanctuary policy. Then-Mayor Edward Koch issued an executive order (E.O. 124) in 1989 that prohibited city employees from reporting illegal aliens to the INS. The policy was continued under his successors, including Rudy Giuliani and Michael Bloomberg post-Septem-

ber 11. This despite federal court rulings against the city's policy.<sup>37</sup> At a recent House hearing, a witness from the New York City government claimed the city now is in compliance with federal immigration laws. He repeatedly asserted that though the law "forbids state and local governments from prohibiting or placing restrictions on the reporting of immigration status information to the INS, it does not . . . [impose] an affirmative duty on police officers to report."<sup>38</sup>

The Seattle City Council recently adopted a policy restricting city police and employees from questioning anyone about immigration status. This ordinance appears to violate federal immigration and welfare laws; it prohibits city workers from "engag[ing] in activities designed to ascertain the immigration status of any person." However, police officers may inquire about "immigration status if they have 'reasonable suspicion' to believe the person has previously been deported and has committed a felony" and may help the immigration service as the law requires.<sup>39</sup> This exception has yet to play out in practical terms. This policy follows such localities as Chicago, San Francisco, Los Angeles, and Houston.<sup>40</sup>

Some local law enforcement officials keep their officers from enforcing immigration violations that are not connected to another crime. For instance, Denver has such a policy.<sup>41</sup> St. George, Utah, and San Diego and Stockton, Calif., police officials also demand that their police officers not enforce the law regarding immigration offenses.<sup>42</sup>

Thus, the Constitution reserves to the states the right to enforce federal laws, including immigration laws, within their jurisdictions. Federal laws enacted in 1996 limit state and local power to restrict immigration enforcement. While courts have generally upheld state prerogative to engage actively in immigration enforcement, additional tools such as Section 133 give even greater abilities for states and localities to become more involved in this area. Though some law enforcement authorities and local politicians have shirked their responsibility regarding immigration law, and the Clinton Justice Department policy statement sought to minimize state and local involvement, this strain runs counter to the facts. The Ashcroft Justice Department has rightfully recognized this and appears to be taking steps to set the matter right. It remains to be seen whether the new Department of Homeland Security follows suit or falls into the Clintonian model of wink-and-nod "enforcement."

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### Recommendations

Federal agents and state and local police must cooperate with one another if the tremendous loopholes that exist are to be plugged. Those loopholes frustrate the rigorous enforcement of immigration law violations. The solution dovetails with the main sources of the problem. A seamless system for immigration enforcement will address authority, information, and resources.

**Authority.** There should be no question in anybody's mind that authority exists for state and local law officers to enforce federal immigration laws, criminal and civil. The Justice Department has made a valuable contribution with the development of its "inherent authority" theory. It should publish this opinion without delay and supersede the former, narrow interpretation from the previous administration.

However, because administrations change, it is not sufficient to rely on a DOJ legal opinion or to place faith in the courts. A clear, statutory statement in federal law should affirm that state and local law enforcement have authority to enforce immigration laws — not in the sense of a special cadre of deputized immigration agents, but in the sense of every police officer while carrying out his normal duties. Also, states should be urged to grant explicit authority to enforce immigration laws in their peace officer statutes.

**Information.** Second, the police officer on the beat must have access to information about immigration violators. The most practical measure would be to build on the current system. Therefore, all available files on immigration violators should be placed in the NCIC system. The addition of absconders should be completed as quickly as possible, with other immigration offenders added after that. This measure would get the information in officers' hands quickly and would not necessitate a secondary inquiry to a totally different system.

Another step could be to require "no bail" status be placed on every immigrant offender's record. Illegal aliens should be viewed as flight risks because of the nature of their offense. "No bail" status would alert local police of the risk of flight and keep the person from posting bail and disappearing.

Information-sharing works best when it goes in both directions. Even if a state or locality does not have its officers enforcing immigration violations apart from other offenses, every police agency should report to the federal government its officers' encounters with illegal aliens. Such reporting would create a record to

help track illegal aliens and to unveil patterns of travel, trafficking, and operations.

**Resources.** Resources must be provided to fund this enhanced activity at the state, local, and federal levels. The best place to look for money would be illegal aliens themselves. A system of fines and penalties would hold individuals personally responsible for their lawbreaking. Fines that exist in current law should be imposed routinely and waived rarely. Individual responsibility would restore meaningful consequences to the breaking of U.S. immigration laws. The worst offenders should face the forfeiture of their assets.

Grant programs such as the State Criminal Alien Assistance Program, whose funding was halved in the latest federal budget for fiscal year 2003, should instead be raised to at least \$1.5 billion per year (the approximate cost of detaining criminal aliens) and steadily increased from there.

In addition to clear authority, information, and resources, several more changes must be enacted for a smooth, efficient system. First, every type of immigration violation must be considered a criminal violation. Arcane distinctions and discrepancies in the law create gray areas, cause uncertainty in the minds of law enforcers, and dampen the inclination to enforce the law.

Also, additional means of detention, processing, and taking custody are necessary. While immigration investigators should not be pulled off their important work, there still needs to be some way to get captured illegal aliens into the hands of federal immigration authorities. A separate force of, say, uniformed BICE officers charged with detention and removal in cooperation with and response to local law enforcement would be one solution. Simplifying detention standards and making greater use of local jail space for alien detention would be another solution. Establishing a circuit-riding system, whereby federal officers regularly come by and take illegal aliens off the hands of local police, might be another. Yet another approach is to contract out the transportation of illegal aliens to private security or corrections firms, or for the federal government to contract with sheriff's departments, the U.S. Marshals Service, or the Federal Bureau of Prisons to transport illegal aliens. Perhaps a combination of all these solutions could be used, depending on which works best in a given area of the country.

Improved use of technology, such as videoconferences to remote areas for expansion of the Institutional Removal Program or mobile access to databases such as the IDENT system, would enhance

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local immigration enforcement in an effective manner. Creation and deployment into interior states of additional Quick Response Teams would boost needed human resources that have proven effective.

The federal government must change its policies so as to encourage, not discourage, immigration enforcement. Authorities should only release an alien if there are extenuating circumstances, as used to be the standard practice, not automatically release unless concerns exist. This will require better usage of local jails, perhaps detaining illegals on military bases, and contracting out to private prison companies. The government must inculcate a culture of enforcement among its people and creatively address the needs so the new culture and procedures succeed.

Finally, a system by which federal enforcement agencies can be held accountable is necessary. Bureaucracies respond best when their funding is at stake. A means to ensure that federal agencies are enforcing immigration laws vigorously and cooperating with states and localities is essential.

### Conclusion

State and local law enforcement belong on the team fighting immigration crimes. They must become engaged in immigration enforcement if the country is serious about achieving homeland security. State and local police officers are the eyes and ears on the home front. They know their territory. They should be enforcing immigration laws, just as they go after those who violate other laws.

Equally, America must begin to view immigration offenses as "precursor crimes." For that is what they often are. Illegal entry precedes unlawful employment in the United States, for instance, which distorts the economy and disadvantages the law-abiding. Overstaying a visa precedes and gives rise to the commission of such offenses as benefit or document fraud. Failing to depart the country following an order of removal sends an alien into an underworld of false identification, illegal employment, and the like.

Illegal immigration and its accompanying criminal enterprises have fostered foreign terrorist cells within America, smuggling rings that combine drug and alien trafficking, money laundering operations that support al Qaeda and Hamas, drug gangs, and identity fraud schemes. *The Washington Post* several years ago reported the dangers of laxity in immigration enforcement, particularly in the interior: "[A]lien criminals and terrorists manipulate the [immigration] ben-

efit application process to facilitate expansion of their illegal activities, such as crimes of violence, narcotics trafficking, terrorism and entitlement fraud." For example, Mir Aimal Karst, a Pakistani terrorist wanted for fatally shooting two CIA employees outside the agency's headquarters in 1993, had obtained two green cards, one through a political asylum application and the other through the amnesty program.<sup>43</sup> This criminal infrastructure, combined with a mythologized view that projects on illegal immigrants pure motives, love of liberty, and commitment to working hard and making it in America, puts every single American at risk.

Some claim that involving state and local law enforcement in immigration matters would set up a police state. But the alternative to local police enforcing immigration law comes much closer to that outcome. A distinction between citizens and aliens exists, and aliens should face greater scrutiny. Otherwise, citizens as well as aliens would have to submit to increased security requirements at every turn. Better to preserve liberty for our citizens by demanding more of the foreigners within our midst.

Others claim that localized immigration enforcement would curb cooperation by ethnic communities. If police took on immigration enforcement, illegal aliens would not report crimes and police departments would lose their trust, they say. However, no one contemplates police rounding up illegal aliens or mass deportations. Rather, what is proposed here envisions local officers, as they come into contact with suspects in their daily routines, pursuing immigration-related indicators during traffic stops or other normal encounters. Besides, there are some circumstances in which an officer might decide not to ask about immigration status, such as when someone calls for help in an emergency. But police should be able to exercise authority in immigration matters when circumstances dictate.

The combination of confusion over whether authority exists for local police to enforce immigration law, lack of timely access to information and incomplete records, strained resources at all levels, and an overwhelmed immigration agency that has given the impression of indolence and uncooperativeness, all told, have resulted in a major security threat.

Local law enforcement's involvement in enforcing immigration violations would increase homeland security. It would raise the stakes of illegal immigration. It would increase the chances of an illegal alien getting caught. And it would help protect public safety at all levels.

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# Background

## Officers Need Backup The Role of State and Local Police in Immigration Law Enforcement

In the midst of a war against Islamist terrorists, the United States remains woefully — and frighteningly — at risk. Even with the enactment of new laws such as the USA Patriot Act and the Enhanced Border Security and Visa Entry Reform Act and the reorganization of major parts of the federal government into a cabinet-level Department of Homeland Security, the American homeland is not secure.

Not only are the borders themselves still porous, frequently crossed by criminals, smugglers, terrorists, and other lawbreakers, but the interior has very little federal enforcement presence. The federal immigration service has just 2,000 investigators (the agents engaged in enforcement) out of its 37,000 employees. The Border Patrol is deployed almost exclusively along the border. And the Clinton administration's implicit policy of "we'll make it a little tougher for you to sneak across the border, but once inside our country, we won't touch you" remains in force.

October 2, 2003

Rep. James Sensenbrenner  
Chairman, House Judiciary Committee  
Rep. John Hostettler  
Chairman, House Immigration Subcommittee  
2138 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Sensenbrenner and Chairman Hostettler:

I am writing in regards to a matter of the utmost concern. It is in regards to a bill that I spoke in favor of at a press conference this summer, on behalf of 9/11 Families. It is my request that this letter be included in the committee record.

We are writing in support of the bill H.R. 2671, the Clear Law Enforcement for criminal Alien Removal Act. Thank you for holding an October 1 hearing on this legislation, and we request that our letter be included in the official record.

We support the idea embodied in the CLEAR Act of having state and local law enforcement play a part in securing our homeland. Those law enforcement agencies that choose to link arms with federal homeland security agencies should receive the support they deserve and need. In an era in which terrorist and criminal groups have exploited our immigration system to do our nation harm, it makes common sense to put America's 700,000 state and local police on the homeland security beat.

Given the magnitude of the illegal and criminal immigration problems America faces, it isn't good enough for federal authorities to tell police just to "let them go" when those police come into contact with known alien lawbreakers. H.R. 2671 approaches this problem in the most appropriate way. It simply gives our local police the support they need in the everyday encounters with foreign lawbreakers, and avoids any kinds of wholesale roundups or mass deportations.

Importantly, the illicit trafficking of persons for sexual exploitation has grown. Because many of these victims of sexual trafficking are from foreign countries, their smugglers also may well be involved in trafficking willing illegal aliens, narcotics, or other illicit items and in perpetrating document fraud, identity theft, money laundering, and other crimes. When these hard-core criminals cross paths with state and local police officers as those officers go about their duty, these law officers may not currently pursue immigration-related violations because they lack a clear understanding of their legal authority, access to relevant information, or adequate resources to detain, transport, and process the lawbreakers. Under this bill, that would change.


The CLEAR Act would empower police officers when they encounter illegal criminal aliens. It would clarify the extent of their legal authority. It would enhance two-way information-sharing so that police officers on the beat would have ready access to the records of aliens they encounter. It would provide the resources needed to detain, transport, and process the criminal aliens these police officers capture.

This bill would increase the likelihood that, should a law officer stop an illegal alien, he would be able to ascertain that this is an immigration criminal, that the person would be detained and arrested, and that the lawbreaker would pay for his crime. It would help disrupt criminal enterprises and apply "broken windows" policing to immigration violations, most of which are criminal offenses.

We note that the CLEAR Act takes a common-sense, conservative approach. It does not contain unfunded mandates. It respects federalism and states' rights. It does not create new government bureaucracies, but makes better use of existing taxpayer-funded entities. It is premised on holding lawbreakers accountable for their actions. And it provides the flexibility to fashion solutions that best suit particular localities.

We urge the Judiciary Committee to pass H.R. 2671 and for the Congress to enact it into law. This is critical legislation, if the rule of law is to be restored.

Sincerely,

  
 April D. Gallop  
 911 Injured Survivor  
 911 Families for Secure America  
 911 Families United to Bankrupt Terrorism  
 September 11<sup>th</sup> Families

cc: House Speaker Dennis Hastert  
 Majority Leader Tom DeLay  
 Majority Whip Roy Blunt  
 Republican Conference Chairman Deborah Pryce  
 Republican Policy Committee Chairman Chris Cox  
 Republican Study Committee Chairman Sue Myrick  
 Rep. Charlie Norwood

**TO: Friends of Immigration Law Enforcement**

**FROM: Craig Nelsen, director**

TESTIMONY IN HOUSE ON NORWOOD BILL

Yesterday in the House, the immigration subcommittee heard testimony on Rep Charlie Norwood's CLEAR Act (H.R. 2671), a very excellent and important bill that would join local law enforcement with federal immigration authorities. Our side was well-represented by Kris Kobach, law professor and candidate for the 3rd Congressional District in Kansas, John Morganelli, district attorney from Pennsylvania, and Jim Edwards, author and expert on the issue. I want to pass on the following note from Jim, and emphasize with Jim that the level of resistance we are beginning to see to this bill is a good indication of just how important it is:

"The opposition to the CLEAR Act is pulling out all the stops getting their immigrant rights' advocacy groups sending letters for the committee hearing record against H.R. 2671.

"Time is of the essence. The record is held open for five legislative days for such things to be added. Please help get as many law enforcement officers, organizations, unions, officials, whoever supports the bill to send in a letter for inclusion in the record.

"The hearing was yesterday, Oct. 1.

Send letters both snail mail and fax to 202-225-3672. Attached are a couple of pieces to work from to get letters started.

Address the letters to:

Rep. James Sensenbrenner

Chairman, House Judiciary Committee

Rep. John Hostettler

Chairman, House Immigration Subcommittee

2138 Rayburn House Office Bldg.

Washington, D.C. 20515

STATE-LOCAL POLICE IMMIGRATION ENFORCEMENT BILL OUTLINE

Authority: Clarifies in federal law that state and local law enforcement has authority to enforce immigration law. Helps ensure that states or localities do not interfere with such authority.

Individual Responsibility Assigned: Holds lawbreakers responsible for their illegal immigration. Adopts new penalties, plus asset forfeiture in certain cases, with the local jurisdiction that captures an illegal alien collecting half of the fine.

Information Sharing: Puts available information regarding violators of immigration law on NCIC. Encourages all jurisdictions, whether or not they have a policy of not enforcing immigration law, to collect and report basic information about the illegal aliens with whom their officers come in contact in carrying out their normal duties, such as name, address, a physical description, and the circumstances of the encounter (e.g., a traffic stop).

Additional Resources: Supplies additional resources to local law enforcement and Homeland Security. Increases authorization for SCAAP, detention and removal, and creates a new grant program for the purchase of equipment for housing and processing illegal aliens.

Better Coordination: Directs the federal government to take custody of illegal aliens caught by a state or local police agency or pay the locality to detain the aliens. Allows creation of a transportation system to routinely collect illegal aliens from localities, including the usage of ICE or Border Patrol or U.S. Marshals, a state or local law enforcement agency, or private contractors. Streamlines usage of local jail facilities for alien detention. Expands Institutional Removal

Program access. Allows greater access to alien screening and processing through technology. Expands the Institutional Removal Program. Federal Cooperation: Provides an administrative process for state and local law enforcers to hold uncooperative federal agencies accountable if there is a pattern or practice of routinely failing to cooperate or assist local police in a certain area with the enforcement of immigration violations.

Training: Provides for training of local officers in immigration law enforcement for those jurisdictions whose policy is to enforce immigration violations, but not as a condition for enforcing the law. Legal Protection of Local Police: Grants police officers and law enforcement agencies immunity from legal liability for enforcing immigration law.



# California POLICE CHIEFS Association Inc.

P.O. Box 205745 Sacramento, California 95805-5745 Telephone (916) 481-8000 FAX (916) 481-8008  
E-mail: calchief@cpsachief.org Website: cpsachief.org

September 19, 2003

Honorable Dianne Feinstein  
United States Senator  
331 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Feinstein:

The California Police Chiefs' Association is opposed to the Clear Law Enforcement for Criminal Alien Removal Act (H.R. 2671). This bill, known as the CLEAR Act, would require state and local police officers to enforce civil immigration laws, or forfeit federal funding earmarked to reimburse them for detaining criminals.

The California Police Chiefs' Association is responsible for providing direct public safety services for over 70% of Californians. We take our responsibilities very, very seriously. We believe that the proposed CLEAR Act will undermine our fundamental mission of protecting the public.

It is the strong opinion of the California Police Chiefs' Association that in order for local and state law enforcement organizations to be effective partners with their communities, it is imperative that they not be placed in the role of detaining and arresting individuals based solely on a change in their immigration status. Most agencies in California already routinely refer illegal immigrants who have committed other criminal violations to INS and will continue to do so.

The proposed CLEAR Act, however, undermines the fundamental partnerships that our police agencies have with their communities. That partnership is essential to effective law enforcement. The CLEAR Act effectively will turn our police officers into immigration agents. The unintended consequences of this bill will be to chill the willingness of immigrants to come forward and report crimes or other suspicious activities. Since we are directly responsible for the investigation and suppression of crime, this chilling of victims and witnesses is simply unacceptable to us.

Our position in opposition to the CLEAR Act is consistent with long-standing policy of the California Police Chiefs' Association. We respectfully request that you vote against the CLEAR Act when it comes before you for your consideration.

Thank you for considering the views of the California Police Chiefs' Association.

Sincerely,

  
Rick TerBorch  
President  
California Police Chiefs' Association

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Yuba  
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MARTIN A. JONES  
EXECUTIVE DIRECTOR  
LARRY ANDERSON

FEDERAL HISPANIC LAW ENFORCEMENT  
OFFICERS ASSOCIATION

3767 West 18<sup>th</sup> Place  
Yuma, Arizona 85364  
[www.fhleoa.org](http://www.fhleoa.org)

September 30, 2003

The Honorable George W. Bush  
President of the United States  
The White House  
1600 Pennsylvania Ave., NW  
Washington, D.C. 20500

Dear Mr. President:

This letter serves to transmit to you the position of the Federal Hispanic Law Enforcement Officers Association (FHELOA) with regard to the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act (H.R. 2671) introduced by Representative Charles Norwood (R-GA) last July.

FHELOA joins the countless other citizens, groups, associations, and law enforcement professionals who have vigorously opposed the CLEAR Act.

The CLEAR Act jeopardizes public safety, undermines the role of local police in enhancing national security, and also undermines federal law enforcement priorities. The Act piles more into the already full platters of State and Local police officers by requiring them to add a large and complex set of federal laws to their already long list of duties, and will make their primary job—investigating, solving, and preventing real crimes—even harder.

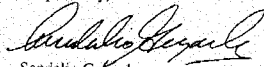
The CLEAR Act bullies and burdens State and Local governments by coercing them into participating, even though it means burdensome new reporting and custody requirements, because failure to do so means further loss of already scarce federal dollars. This legislation is a perfect example of unnecessary law making because mechanisms already exist within current law to foster cooperation between local law enforcement and federal immigration agents.

If enacted, the CLEAR Act would encourage race and ethnic based profiling. Because local police are ill equipped to determine who has violated a civil immigration law, some will inevitably stop and question people of certain ethnic backgrounds, who speak certain languages, or who have accents when speaking English.

The Bill grants civil immunity from lawsuits for officers who enforce immigration laws. This would set back the U.S. civil rights movement back decades, and introduces a slippery slope in the quest to eradicate racial profiling from U.S. law enforcement.

On behalf of FHLEOA I strongly urge you to oppose the CLEAR Act.

Respectfully,



Sandelio Gonzalez  
National President

cc: Members of Congress  
League of United Latin American Citizens  
National Council of La Raza

AMERICAN CIVIL LIBERTIES UNION, SUBMITTED BY TIMOTHY H. EDGAR, LEGISLATIVE  
COUNSEL

Mr. Chairman, Representative Jackson-Lee and members of the subcommittee:

On behalf of the American Civil Liberties Union (ACLU) we are pleased to submit the following statement for the record at this hearing on H.R. 2671, the "Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act of 2003." Despite its title, the CLEAR Act seeks to entangle local police officers with the enforcement of civil, not criminal, violations of federal immigration law.

The ACLU is a non-partisan, non-profit organization with 330,000 members, dedicating to preserving our freedoms as set forth in the Constitution. The promises of the Constitution, including those against discrimination and those against unreasonable searches and seizures, apply to all persons within the United States, and thus protect both citizens and non-citizens.

Policies that separate federal immigration enforcement and state and local law enforcement, such as those adopted by hundreds of communities across the country, are vital to preserving the civil liberties and safety of residents of immigrant communities. The CLEAR Act would penalize governments and police forces that adopt such policies, substituting the federal government's judgment for that of local police. Passing the CLEAR Act would be a serious mistake.

Involving state and local law enforcement in immigration status issues would have a severe impact on the civil rights and civil liberties of all persons, citizens and non-citizens alike, who reside in communities with large immigrant populations. Such involvement is opposed by many police departments and local governments who fear it would undermine public safety. It is opposed by conservatives who are wary of establishing a precedent for state and local enforcement of federal civil regulatory schemes. Finally, such a policy is not supported by the Bush White House, except with respect to what it describes as a narrow class of "anti-terrorism" matters.

*Reversing Policies That Separate Local Law Enforcement from Immigration Enforcement Would Undermine Civil Liberties and Provide a Green Light for Racial Profiling*

Reversing policies that separate immigration enforcement from local law enforcement will increase racial profiling and other unjustified stops, not only of undocumented workers, but also of legal residents and United States citizens who "look foreign." Many of these problems have plagued earlier efforts of state and local law enforcement officers to become involved in civil immigration enforcement. For example, an effort in 1997 in Chandler, Arizona on the part of local police to enforce immigration laws resulted in widespread civil rights abuses, including unjustified arrests of legal residents and citizens of Mexican descent, severely strained police and community relations, and led to substantial liability on the part of the municipality.

A policy that permits or encourages state and local law enforcement officers to stop and question persons for the purpose of enforcing federal immigration law is fraught with constitutional peril. Any stops made on the basis of racial appearance clearly violate the Fourth Amendment. As the Supreme Court has made clear, officers may not arrest individuals for immigration enforcement purposes except on the basis of probable cause.<sup>1</sup> The Court also made clear that the bare fact that a person "looks foreign" cannot supply probable cause.<sup>2</sup> Indeed, relying on racial factors for the enforcement of any law, including immigration laws, is strictly forbidden under the Constitution and will lead to damages if officers engage in such conduct.<sup>3</sup> Because of these problems, many state and local police departments and local governments, including New York City, Los Angeles, Seattle, Washington and Montgomery County, Maryland, have longstanding policies precluding their officers from becoming entangled in immigration enforcement.

*Reversing Policies That Separate Local Law Enforcement from Immigration Enforcement Would, According to Many Police Departments and Law Enforcement Officials, Seriously Undermine Public Safety*

Reversing such policies would also seriously erode public safety. While those who favor such a change could point to incidents of particular undocumented immigrants who were not detained as a result of such a policy, these incidents must be weighed

<sup>1</sup> *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975)

<sup>2</sup> *See id.*, at 885-86 (holding that arrest violated Fourth Amendment because officers could not justify stop of car based only on "the apparent Mexican ancestry of the occupants.")

<sup>3</sup> *See, e.g. Carrasca v. Pomeroy*, 313 F.3d 828, 835-36 (3rd Cir. 2002) (refusing to "summarily dismiss" claim that arrest "was based solely on Plaintiffs' appearance as Mexicans . . . further bolstering their racial profiling claim.")



against the police's need to establish the trust and cooperation of their residents in order to solve crimes. Many state and local police departments who have considered these issues have decided that any benefits of involvement in immigration enforcement matters would be seriously outweighed by the effect such a policy would have on undermining the trust and confidence of immigrant communities. Absent such trust, many local and state police are concerned that members of immigrant communities will fear contacting the police if they are a victim of crime or a witness to crime.<sup>4</sup>

Having a specialized federal agency whose sole responsibility is immigration enforcement simply makes good sense, as it frees other agencies, such as state and local police, to investigate crime and to obtain the cooperation of the communities they serve and protect. Good law enforcement requires trust. Reversing policies that separate immigration enforcement from local law enforcement could drag state and local police into the business of questioning and detaining individuals solely on the basis of immigration status, driving a wedge between immigrant communities and the very police they need to keep their communities safe.

*Involving State and Local Police in Civil Immigration Enforcement Is Opposed by Conservatives, Who Fear It Could Set a Precedent For State and Local Involvement in Enforcing Other Federal Regulatory Schemes*

Leading conservatives, including Grover Norquist, President of Americans for Tax Reform, and David Keene, Chairman of the American Conservative Union, have expressed opposition to having state police enforce civil immigration laws, denouncing it as a scheme that could lead to "nationalization of local law enforcement." As they observe, "If local police are to enforce our immigration laws, will they soon be required to seek out and apprehend those who violate our environmental laws, or the Americans with Disabilities Act as well?"<sup>5</sup>

These concerns arise because enlisting states in enforcing immigration laws would upset the basic federal scheme. Under our Constitution, immigration policy is a federal matter. The question of which non-citizens are permitted to stay in the United States, and which may be removed, is governed by a complex set of laws and regulations which is implemented by a federal regulatory agency. These laws and regulations have been described by the Supreme Court as "intimately blended and intertwined with responsibilities of the national government," so that where the federal government has enacted "a complete scheme of regulation" on the subject of immigration, "any concurrent state power that may exist is restricted to the narrowest of limits."<sup>6</sup> State law enforcement officials are not trained in the complexities of immigration law and procedure, and are not well suited to make judgments about the enforcement of such laws.

For these and other reasons, according to a 1996 memorandum from the Office of Legal Counsel (OLC) of the Department of Justice, while state and local police may lawfully assist federal immigration officials in certain respects, "[s]tate and local police lack recognized legal authority to stop and detain an alien solely on suspicion of civil deportability, as opposed to a criminal violation of the immigration laws or other laws." In 2002, the Bush Administration announced it was reconsidering this policy, and eventually endorsed an exception to this position in certain allegedly terrorism-related cases (discussed below). We agree with OLC's 1996 conclusion that any use of state or local police to enforce civil immigration laws, regardless of whether the cases are said to be terrorism related, is vulnerable to legal challenge.

*Using State and Local Law Enforcement Officials to Enforce Immigration Law, Except With Respect to a Narrow Class of "Anti-Terrorism" Cases, Is Not Supported by the Bush White House*

A wholesale reversal of these policies also appears to be at odds with the views of the Bush White House, which has endorsed expanding the role of state or local

<sup>4</sup>The National Immigration Forum has posted on its website a list of statements by local and state police from across the country, all opposing any attempt to enlist them in the enforcement of immigration laws. See *Opposition to Local Enforcement of Immigration Laws*, updated October 1, 2002, available at: <http://www.immigrationforum.org/currentissues/articles/100102—quotes.htm>

<sup>5</sup>See Eric Schmitt, *Two Conservatives Tell Bush They Oppose Plan for Police*, N.Y. Times, June 2, 2002; Letter from Raymond Flynn, David Keene and Grover Norquist to President Bush, May 30, 2003, available at: <http://www.immigrationforum.org/currentissues/articles/060302—doj.htm>

<sup>6</sup>*Hines v. Davidowitz*, 315 U.S. 52, 66–67 (1941) (striking down separate Pennsylvania scheme for registration of non-citizens, where federal government had already put in place such a scheme).

law enforcement to arrest individuals for immigration offenses only in cases said to be related to terrorism. In 2002, controversy arose when the Justice Department announced that it would place the names of some non-citizens who were wanted only for committing immigration violations in the National Crime Information Center (NCIC) database, which is routinely consulted by state and local police.

In response to these concerns, White House Counsel Alberto Gonzalez said that “[o]nly high-risk aliens who fit a terrorist profile” would be placed in the NCIC.<sup>7</sup> President Bush’s stated preference for a “narrow” use of the NCIC would be completely undermined by a wholesale reversal of state and local government policies that generally prohibit their officers from enforcing immigration laws.

As we explain above, we do not agree that creating an exception providing for state and local immigration enforcement in some cases would be legal or wise; nor do we agree that the cases this Administration calls terrorism-related - almost all of which involve very common, garden-variety immigration status violations - necessarily have anything to do with terrorism. Nevertheless, a complete reversal of policies separate immigration and local law enforcement would plainly go beyond authorizing some state and local law enforcement officials to assist in enforcing immigration laws in some “narrow” subset of cases said to be terrorism-related.

#### *Conclusion*

Any benefits that might result from enlisting state and local police to enforce complex federal immigration laws would be far outweighed by the serious consequences of such a change. A wholesale reversal of policies that separate immigration enforcement from local law enforcement would (1) harm the civil rights and civil liberties of immigrant communities and lead to widespread racial profiling, (2) harm public safety by driving a wedge between immigrant communities and the police who serve and protect them, (3) harm our federal system by authorizing state and local police to enforce a civil federal regulatory scheme, and (4) complicate President Bush’s stated position of supporting state and local enforcement only in certain “narrow” circumstances said to be related to terrorism.

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PREPARED STATEMENT OF MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL  
FUND, SUBMITTED BY KATHERINE CULLITON, LEGISLATIVE STAFF ATTORNEY

#### MALDEF OPPOSES USING FIRST RESPONDERS TO ENFORCE FEDERAL CIVIL IMMIGRATION LAWS

Proponents of the Clear Law Enforcement for Criminal Alien Removal (“CLEAR”) Act (H.R. 2671) tell horror stories alleging that local police are not empowered to catch criminals who happen to be undocumented immigrants. None of the cases being put forward to justify the CLEAR Act would be solved by state and local police enforcing civil immigration laws. State and local police already have all the legal power needed to make the arrests necessary. We do not need a change in the laws for the criminals described in these horror stories to have been arrested and prosecuted for their crimes and any of their immigration law violations.

The CLEAR Act and similar proposals would have state and local police target all immigrants, criminals and non-criminals alike. There are approximately eight million undocumented immigrants in the U.S. It is a civil violation to be living in the U.S. without legal authorization. The overwhelming majority of these immigrants are hard-working families trying to make a better life for themselves. They are not criminals.

If the CLEAR Act were enacted, first responders would have to use precious national and local security resources to reign in immigrants instead of doing the police work needed to keep America safe. Police across the country are opposed to such policies, because such policies would lead to a decrease in trust between police departments and immigrant communities and an increase in vulnerability to crime and harassment in immigrant communities, for immigrants and those who “look like” immigrants, decreasing security for everyone. MALDEF, a national, non-partisan, nonprofit organization that has been defending the civil rights of Latinos for 35 years, is also opposed to the CLEAR Act and similar proposals, for many of the same reasons, as set forth in the legal and factual analysis below.

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<sup>7</sup> See Letter from White House Counsel Alberto R. Gonzalez to Migration Policy Institute, June 24, 2002, available at: <http://www.migrationpolicy.org/files/whitehouse.pdf>

## IMMIGRANT/MINORITY COMMUNITIES WOULD BE LESS SAFE

Latinos know from tough experience that when local police enforce federal civil immigration laws, neighborhoods become less safe. Crime victims are further victimized by being unable to safely report the crimes against them. Witnesses of crimes committed against immigrants and citizens are afraid to come forward for fear they will be deported. Some examples of these situations are:

- Mexican national Petra Martinez was murdered along with her two-year-old son, Urel Martin, on July 19, 2003, in their home in a heavily-immigrant neighborhood in Clearwater, Florida. Local police believe that some members of the community have information, but are afraid to come forward for fear of immigration repercussions.
- “Jorge” is a sixteen-year-old boy who went to the police after escaping a kidnapping situation, in which he was held captive and tortured by a gang of boys for days. Instead of helping Jorge, the police turned him over to immigration and although he was a crime victim with no criminal record himself, he was sent to a maximum-security juvenile facility in Spokane, Washington.
- In Maine, a Honduran-American victim of robbery called the police. The police then tried to determine if he was legal and turned him over to the former Immigration and Naturalization Service (“INS”). He was eventually released, but he was also living with several other immigrants who were out of status, and were taken into INS custody. Such practices have an extreme chilling effect.
- On February 27, 2003, Lesley Orloff, Director of the National Organization for Women’s (“NOW”) Legal Defense Fund’s Immigrant Women Program testified that battered immigrant women’s fear of reporting abuse for fear of retaliation by their abusers is compounded by fear of deportation, and that: “These issues preclude many battered immigrant women from requesting the help they need to counter the domestic violence they are experiencing in their lives.”
- The NOW Legal Defense Fund survey demonstrated that fear of deportation was the most significant reason that battered immigrant women are much less likely to report abuse. This reality is exacerbated by state and local police threatening to enforce civil immigration laws, and is in direct contradiction to the legal protections for immigrant women set forth in the Violence Against Women Act.

Because community policing, i.e., building trust between police officers and the communities they patrol, is such a valuable tool for public safety, numerous police departments across the country have made public statements against becoming involved in civil immigration enforcement.

## INCREASED RACIAL PROFILING IS FORESEEABLE

Not only is safety compromised for Latinos and other minority/immigrant families and communities; to make matters worse, law enforcement’s use of racial profiling increases when state and local police think they are charged with enforcing federal civil immigration laws. For example:

- This past May in Riverside, California, local police officers demanded to see documents of all Latinos working in an avocado grove, harassing citizens, legal residents and undocumented immigrants alike and threatening to turn them over to the Border Patrol. One undocumented immigrant ran and was then assaulted by the local police. The Riverside Sheriff told the press that his department policy was that his officers should not be enforcing civil immigration laws, but the officers were confused by the statements of Attorney General Ashcroft.
- Prior to 9/11, Latino civil rights groups reported a national trend of case after case of racial profiling of Latinos (including citizens and legal residents from all walks of life) when state and local police became involved in enforcement of federal civil immigration laws. For example, in Chandler, Arizona, police tried to assist the INS in raids and the Arizona Attorney General later found that residents were stopped repeatedly “for no other reason than their skin color or Mexican appearance or use of Spanish language.” In a Katy, Texas joint police-INS operation, local police stopped individuals in vehicles and in street sweeps based on Hispanic appearance only. This type of discrimination is prohibited by the U.S. Constitution.

- Since 9/11, across the South, state and local police have been stopping Latinos and demanding their immigration papers, through the practice of racial profiling.
- When state and local police think they can enforce federal civil immigration laws, racial profiling of those who “look like” immigrants is highly foreseeable.

Racial profiling is foreseeable because the CLEAR Act would allow local police to perform a role for which they are ill-equipped and have little or no training. When state and local police interact with immigrants, their actions are subject to strict scrutiny. Despite this high standard, many local police rely on race and national origin in determining who to detain, question, or arrest.

Local police cannot properly discern between who is an asylum seeker, who has been the victim of human trafficking and is entitled to the new T-visa, who is out of status because their papers were mis-processed or lost by the former INS, which was notorious for the inaccuracy of its records, who has valid immigration appeal rights, and who is without documentation with no remedies yet still deserves the due process protections that the U.S. Constitution ensures for every person under the Bill of Rights. Local police are overwhelmed with public safety and community policing needs, and they are simply not properly trained in immigration laws. Without proper training, federal oversight and accountability, many officers simply choose to demand immigration documents from those who “look foreign,” which is a determination based on race, ethnicity and national origin.

Section 109 of the CLEAR Act expressly states that training would not be required before local police are tasked to enforce federal civil immigration laws, breaking the model currently set forth under the Immigration and Nationality Act (“INA”). Section 1357(g) of the INA permits the use of state and local police to enforce federal civil immigration law only under the limited statutory circumstances of a properly signed Memorandum of Understanding (“MOU”), which requires their training in the complexities of federal civil immigration laws.

In contrast, the CLEAR Act would break the MOU rules requiring training under the INA, and it would completely gut civil rights protections in the process. Its sponsors acknowledge that racial profiling is foreseeable under these circumstances. In sum, while the CLEAR Act would not increase public safety or national security, it would provide an excuse to harass Latinos.

#### ENFORCING CIVIL IMMIGRATION LAWS FALLS UNDER THE EXCLUSIVE JURISDICTION OF THE FEDERAL GOVERNMENT

For the reasons discussed above, MALDEF urges Congress to vote against any policy that would encourage state and local police to become federal civil immigration law enforcers. This would be very dangerous public policy. Congress should instead clarify that immigration enforcement is the job of the federal government, through the newly-created Department of Homeland Security (“DHS”). Federal law enforcement should concentrate on identifying the individuals who are most dangerous. Instead of targeting or profiling all immigrants, a more effective strategy would be to investigate suspicious behavior in order to find the real terrorists.

The CLEAR Act and similar proposals would not only decrease public safety and increase racial profiling, they would also contradict well-settled Supreme Court doctrine that civil immigration enforcement falls under the exclusive jurisdiction of the federal government. As the Department of Justice and the former INS acknowledged in their own rule-making procedure as recently as January of this year, the federal government and Congress have plenary power over immigration, and the States may not interfere.

In 1996, the Department of Justice (“DOJ”) Office of Legal Counsel issued a legal opinion clarifying that state and local police may not enforce federal civil immigration laws, which falls under the exclusive jurisdiction of the federal government. The DOJ clarified that state and local police may assist only in cases of criminal violations of federal immigration laws, under the circumstances of a Terry stop; or in cases of emergency, if a special deputization has been undertaken by Justice and supervised by federal officials; or if an exceptional memorandum of understanding has been agreed to, in accordance with Section 1357(g) of the INA, which was enacted in 1996.

However, during a June 2002 press conference, Attorney General Ashcroft expressed a different sentiment, and stated that he thought that state and local police have “inherent authority” to enforce federal civil immigration laws. Since then, the Department of Justice answered a Freedom of Information Act (“FOIA”) request as to the basis of this idea by denying access to the documents underlying this novel

interpretation. This FOIA request is now the subject of federal litigation, and a second FOIA request, filed by the ACLU and numerous other groups, is still pending. During House Judiciary hearings this [July], Attorney General Ashcroft did not answer Representative Linda Sanchez' question about the basis of his idea that state and local police have "inherent authority" to enforce federal civil immigration laws. Representative Sanchez asked the question because the Attorney General's statement has led to increased racial profiling and harassment of Latino citizens and immigrants alike. But Attorney General Ashcroft avoided answering her question as to the basis of his idea.

Since the Attorney General's interpretation contradicts well-established Supreme Court doctrine about the exclusive federal plenary power to regulate immigration under the U.S. Constitution, it may be that the only legal basis for local law enforcement's expanded involvement in civil immigration matters is that which the Congress would put into place through the CLEAR Act. However, in any case, Congress may not legislate in contravention of the U.S. Constitution.

#### CONCLUSIONS AND RECOMMENDATIONS:

Congress must not pass the CLEAR Act. As discussed above, demanding that state and local police enforce federal civil immigration laws would be very bad policy and alienate immigrant and minority communities, who are not the enemy. Latinos, for example, are very concerned about the war against terrorism. However, for all practical purposes, the CLEAR Act would mandate the excuse of racial profiling of Latinos and many other U.S. citizens and immigrants, especially people of color.

For all these reasons, MALDEF urges the Congress and the DHS to clarify that enforcement of federal civil immigration laws falls under the exclusive mandate of the DHS. The 1996 Department of Justice ("DOJ") Memorandum Opinion clarifying this conclusion and detailing the limited exceptions in which state and local police may enforce civil immigration laws should be reaffirmed. The only legal circumstances under which state and local police may get involved in civil immigration enforcement is through an MOU negotiated under Section 1357(g) of the INA, with proper training and federal accountability and oversight, to prevent abuse, including due process and civil rights violations. Furthermore, federal law enforcement should concentrate first on identifying dangerous criminals and terrorists, prioritizing precious national security resources in order to keep American communities safe. First responders such as state and local police should concentrate on protecting against crime and terrorism, while maintaining community policing practices recognizing America as a nation of immigrants.

MALDEF supports the Rule of Law and is not against enforcement of federal immigration laws. However, Congress and the Administration have acknowledged that the system is broken; therefore, it must be acknowledged that many are out of status through no fault of their own. The former INS lost and even shredded documents, and INS information is notoriously inaccurate. Comprehensive immigration reform is needed before any massive enforcement effort would not lead to serious due process violations and permanent damage to American democracy.

Finally, careful review of the facts and the law shows that the crimes mentioned by supporters of the CLEAR Act could have been solved through existing laws. If this was not done in the cases at issue, Congress and the DHS should concentrate on identifying how existing law should be properly implemented to ensure protection against these egregious crimes. At the same, immigrant communities must also have safe access to police protection, including the ability to report crimes. If public safety and national security are truly a priority, the CLEAR Act must not be enacted, community policing practices must be supported and even encouraged, and the U.S. government should clarify that it values the assistance of immigrant communities in fighting the war against terrorism.

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**STATEMENT OF**  
**LESLYE E. ORLOFF**  
**DIRECTOR,**  
**IMMIGRANT WOMEN PROGRAM**  
**NOW LEGAL DEFENSE AND EDUCATION FUND**  
**AND CO-CHAIR OF**  
**THE NATIONAL NETWORK TO END VIOLENCE**  
**AGAINST IMMIGRANT WOMEN**  
**WITH**  
**THE NATIONAL IMMIGRATION PROJECT OF**  
**THE NATIONAL LAWYERS GUILD**  
**AND FAMILY VIOLENCE PREVENTION FUND**  
**BEFORE THE SUBCOMMITTEE ON**  
**IMMIGRATION BORDER SECURITY AND**  
**CLAIMS**  
**OF THE**  
**HOUSE OF REPRESENTATIVES**  
**COMMITTEE ON THE JUDICIARY**  
**DANGERS THAT LOCAL POLICE REPORTING**  
**CAN CAUSE FOR IMMIGRANT VICTIMS OF**  
**DOMESTIC VIOLENCE**

**SEPTEMBER 30, 2003**

**Testimony:**

Thank you for the opportunity to submit additional testimony for the record on the dramatic negative effect that the CLEAR Act will have on immigrant victims of domestic violence, rape, sexual assault, trafficking and other violent crimes. My name is Leslye Orloff. I am the Director of the Immigrant Women Program at NOW Legal Defense and Education Fund. I am also co-chair of the National Network to End Violence Against Immigrant Women (National Network) along with the National Immigration Project of the National Lawyers Guild and the Family Violence Prevention Fund. The National Network is a 500- to 700-member strong organization made up of advocates, attorneys, shelter workers, social workers, health care providers, police, prosecutors, researchers and others who provide assistance to and advocate for improved legal protections for immigrant victims of domestic violence, sexual assault and trafficking.

I have been working personally on issues of battered immigrant victim advocacy for about 20 years. First, I want to start by thanking the many Members of Congress and many members of this subcommittee for the work that you have done in past years in supporting legislation offering immigration protections and strengthening access to safety-net services for immigrant victims of domestic violence, sexual assault, and trafficking—most notably, the immigration protection included in the Violence Against Women Acts of 1994 and 2000 and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) and the Personal Responsibility and Work Opportunity Act (PRWORA) of 1996.<sup>1</sup>

To provide you with an example of how deputizing local law enforcement endangers immigrant victims, I want to share with you a story about a woman named Lucia. This story illustrates the problems that occur for immigrant victims when law enforcement takes on the role of the Bureau of Immigration and Customs Enforcement (BICE); when there are Memorandums of Understanding like the MOU in south Florida in which police are enforcing federal immigration laws; and what happens in immigrant communities when this occurs. Lucia lives in south Florida.

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<sup>1</sup>Leslye E. Orloff and Janice Kiguuyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, Volume 10, Number 1, April 2002, *American University Journal of Gender, Social Policy and the Law*.

She is 35 years old and has been married for quite some time to a U.S. citizen who has abused her for years and has never filed immigration papers for her. They have two U.S. citizen children and continue to be married and to live together.

Lucia had suffered numerous beatings perpetrated by her husband. These beatings were so severe that the neighbors heard the abusive incidents, saw bruises a number of times, and heard her screams of pain. Her husband never filed immigration papers for her, although he clearly could as a U.S. citizen. Lucia's husband told her repeatedly that "If you call for help, the police will turn you in to BICE and deport you and you will never see your children again." We hear these threats in cases of immigrant victims domestic violence all over the country. In fact, research has found that such forms of immigration related abuse almost always co-exist with physical and sexual abuse in a relationship.<sup>2</sup>

Lucia's husband's threats to have her deported and ensure that she will not see her children kept Lucia from calling the police, seeking any form of help. She did not go to the hospital, no matter how bad her injuries were. Ultimately, her neighbor, who was also an immigrant, took her to a local agency that worked with immigrant victims of domestic violence. Both the neighbor and Lucia told the advocates at the agency that the reason Lucia never called the police was because of the advertising on television and radio about the fact that if you call the police, they turn you over to BICE. Her fear of being turned over to BICE was so great that she put up with the beatings because she believed she was trapped, that she had no other options.

What happened in Lucia's case, immigrant victims being cut off from law enforcement help and protection by policies in which police choose to enforce immigration laws. These policies send a clear message to non-citizen crime victims – if you call the police for help to stop abuse or report a crime you will be deported. We see this happening all over the country, in cities, small towns and rural communities. Police reporting to BICE really does pose harm for immigrant victims of

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<sup>2</sup> Giselle Aguilar Hass et al., *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, in DOMESTIC VIOLENCE: GLOBAL PERSPECTIVES 103, 106-109 (2000).



domestic violence, rape, sexual assault, and trafficking, particularly when it happens routinely.

Domestic violence is not higher in any particular race, class, or ethnic group in the U.S. But immigrant victims are at greater risk of longer exposure to abuse due to systemic barriers that they have to overcome when seeking help. Barriers include, but are not limited to, concerns that if immigrant victims call the police for help they will be turned in to BICE coupled with the fact that there are very few culturally competent services in this country to help immigrant victims of domestic violence.

Over the years, thanks to Members of Congress, the Violence Against Women Act (VAWA) has done a lot to begin to address barriers faced by battered women. However, for immigrant victims, VAWA interventions have not been wholly successful. This is in no small part due to the fact that, although not required to by Federal law, there are law enforcement officers across the country who routinely ask immigration status questions of victims who call for help. There have been a few cases in which judges in protection order cases ask victims about their immigration status and call BICE. These judges, instead of holding the abuser accountable for his violence and giving the immigrant victim a protection order, have BICE pick up the immigrant victim. When police, judges and immigration officials report immigrant victims to BICE and victims are picked up, many are deported despite the fact that they legally qualify for Violence Against Women Act immigration relief and despite the fact that BICE has internal policies that are supposed to prevent immigrant victims who qualify for VAWA, T visa or U visa immigration relief from being deported.<sup>3</sup> These policies are not currently working effectively.

This is a tremendous problem. We are trying to make sure that, whatever Congress does on the issue before this subcommittee, it keeps in mind the effect that any Congressional action will have on the victims whose cooperation is key to prosecution of people committing crimes in our

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<sup>3</sup> Michael D. Cronin, Office of Programs, Immigration and Naturalization Service, Victims and Trafficking and Violence Prevention Act of 2000 (VTVTA) Policy Memorandum Number 2- "T" and "U" Non-Immigrant Visas, Memorandum to Michael Pearson, Office of Field Operations, INS Memo HQINV 50\1 (Aug. 30. 2001).

communities. Members of this committee need to understand that sweeping deputizing of local police, sheriffs and state troopers to enforce immigration laws will have the effect of allowing perpetrators of crimes against immigrant victims to go free. These perpetrators of domestic violence, rape, sexual assault and trafficking will continue to live in our communities and will continue to perpetrate crimes against others.

There is a history of insufficient police training, both with regard to working with immigrant communities through community policing and also with regard to domestic violence. Researchers have found that among immigrant victims of domestic violence, only one in four are willing to call the police for help, no matter how bad the violence, no matter how long it has gone on, and no matter how severe. The reporting rate for U.S. women, generally, is one in two, but for undocumented immigrant populations, the reporting rate drops to one in seven. These reporting rates are in cases of serious domestic violence with numerous incidents of abuse.

Because abusers use immigration status and threats to turn victims over to BICE, as a tool to control their victims,<sup>4</sup> when immigrant victims hear on the radio and television that police are in fact reporting to BICE, or when a victim hears from a friend in the community who is her support system that her friend's sister was turned over to BICE when she called the police to help her on a domestic violence case, the fear of deportation becomes the ultimate barrier. Women will not call for help. Women will not cooperate in getting abusers prosecuted. The proposed legislation will have an incredible chilling effect.

Instead, what should be happening is that we should be fostering trust through community policing in immigrant communities and have better law enforcement overall, which will enable us

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<sup>4</sup> Congress in 1994 and again in 2000 in the Violence Against Women Act expressed its interest in ending the control over immigration status as a tool used against immigrant victims. The Violence Against Women Act of 2000 Section by Section Summary, 146 CONG. REC., S10,195 (2000) states as follows: "[T]he Battered Immigrant Women Protection Act of 2000. . . Title V continues the work of the Violence Against Women Act of 1994 ("VAWA") in removing obstacles inadvertently interposed by our immigration laws that may hinder or prevent battered immigrants from fleeing domestic violence safely and prosecuting their abusers by allowing an abusive citizen or lawful permanent resident spouse to blackmail the abused spouse through threats related to the abused spouse's immigration status. . . VAWA 2000 addresses the residual immigration law obstacles standing in the path of battered immigrant spouses and children seeking to free themselves from abusive relationships that either had not come to the attention of the drafters of VAWA 1994 or have arisen since as a result of 1996 changes to immigration law."

– as the Violence Against Women Acts of 1994 and 2000 intended us to do – to prosecute perpetrators of domestic violence, perpetrators of rape and sexual assault, and traffickers in women and children.

If we cannot bring these prosecutions, our communities will suffer. It's not just the individual victims who can't get protections and are harmed, their children grow up learning that violence is an appropriate response to problems in intimate relationships. Many of the young boys in these families will grow up to continue the cycle of violence in their own relationships and in our communities. We know that if domestic violence and sexual assault perpetrators can abuse one person and that person is deported, they will continue to abuse others, and will put other people at risk in our communities.

It is important to understand that many immigrant victims who come to the attention of police have suffered injuries. These injuries usually lay the groundwork for probable cause determinations in criminal prosecutions. These are victims who can qualify for immigration protections under either the Violence Against Women Act, the U visa for crime victims, or the T visa for trafficking victims.

We want to encourage the kind of cooperation with police that ensures that victims are not jeopardized, and are not asked about immigration status, so that they feel free to call the police and so that the prosecutions happen. We seek your support for bipartisan efforts to form a consensus that criminal justice system officials should not be inquiring into the immigration status of victims who call the police for help. On behalf of the immigrant victims that NOW Legal Defense and Education Fund and the National Network to End Violence Against Immigrant Women work to help, we seek your understanding that if immigration status questions are asked, innumerable immigrant victims and their children are needlessly endangered. We urge you not to support sweeping legislation that will the ability of local law enforcement to fight crime and will at the same time put the lives of non-citizen victims in peril.

If am including with this testimony an excerpt from research on immigrant victims

interactions with police in domestic violence cases to amplify the record on this important issue.

### **Safety Implications of Police Response to Calls for Help From Battered Immigrants<sup>5</sup>**

#### **I. Introduction**

Domestic violence does not occur at a higher frequency within one socio-economic class, racial group, or geographic area.<sup>2</sup> However, some victims of domestic violence are at a greater risk of longer exposure to and greater impact from domestic violence because of their lack of access to culturally responsive services from the community in which they live.<sup>3</sup> Immigrant women<sup>6</sup> who encounter language barriers, cultural differences, and stereotyping by mainstream society are often invisible to the anti-domestic violence movement.<sup>4</sup> The pervasive lack of understanding of the life experiences of battered immigrant women by the systems designed to

<sup>5</sup> This portion of this testimony is adapted from the following article pending publication with the U.C.L.A. Journal of Women and the Law: Leslye E. Orloff, Mary Ann Dutton, Giselle Aguilar Hass, Nawal Ammar, Battered Immigrant Willingness to Call the Police for Help and Police Response (forthcoming 2003)

<sup>2</sup> Lisa E. Martin, *Providing Equal Justice for the Domestic Violence Victim: Due Process and the Victim's Right to Counsel*, 34 GONZ. L. REV. 329, 331 (1998/1999). See generally, Honorable Karen Burstein, *Symposium on Reconceptualizing Violence Against Women By the Intimate Partners Critical Issues: Naming the Violence: Destroying the Myth*, 58 ALB. L. REV. 961 (SPRING, 1995); Zanita E. Fenton, *Domestic Violence in Black and White: Racialized Stereotypes in Gender Violence*, 8 COLUMN. J. GENDER & L. 1 (1998); Mary Ann Dutton, Leslye Orloff, & Giselle Aguilar Hass, *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO J. POVERTY L. & POL'Y 245 (SUMMER 2000).

<sup>3</sup> See Dutton, *supra* note 1; Leslye Orloff, *Lifesaving Welfare Safety Net Access for Battered Immigrant Women and Children: Accomplishments and Next Steps* WM. & MARY L. REV. (2001), Cecilia Espinoza, *No Relief for the Weary: VAWA Relief Denied for Battered Immigrants Lost in the Intersections*, 83 MARQUETTE L. REV. 163 (1999); Lee J. Teran, *Barriers to Protection at Home and Abroad: Mexican Victims of Domestic Violence and the Violence Against Women Act*, 17 B.U. INT'L L.J. 1 (1999); see also Virginia P. Coto, *LUCHA, The Struggle for Life: Legal Services for Battered Immigrant Women* 53 U. MIAMI L. REV. 749 (1999) (summarizing difficulties facing organizations providing legal services to poor, battered immigrant women); Karen Wang, *Battered Asian American Women: Community Responses From the Battered Women's Movement and the Asian American Community*, 3 ASIAN L.J. 151 (1996); *Supplement Respecting Diversity: Responding to Underserved Victims of Crime*, NVAA (2000) at <http://www.ojp.usdoj/ovc/assist/nvaa2000/academy/H-8-DIVR.htm>. See also *Barriers*, FAMILY VIOLENCE PREVENTION FUND at <http://www.fvpf.org/immigration/barriers.html>.

<sup>6</sup> The term immigrant women is used in this article generally to refer to immigrant women who were born in countries outside of the United States and includes immigrants, refugees, documented and undocumented immigrants and persons who may currently be naturalized citizens.

<sup>4</sup> Tien Li Loke, *Trapped in Domestic Violence: The Impact of United States Immigration Law on Battered Immigrant Women*, 6 B.U. PUB. INT. L.J. 589, 592 (WINTER 1997). See generally Sandra D. Pressman, *The Legal Issues Confronting Conditional Resident Aliens Who are Victims of Domestic Violence: Past, Present, and Future Perspectives*, 6 MD. J. CONTEMP. L. ISSUES 129 (1995).

protect battered women and immigrant victims greatly reduces the likelihood that immigrant victims will be able to escape the violence in their lives.<sup>5</sup> While there have been some attempts to remove the barriers that battered immigrant women face, these attempts have not been completely successful. This is partially attributed to the lack of responsiveness and culturally appropriate treatment battered immigrant women experience when interacting with the police.

There are many strategies battered women use to escape, avoid and stop intimate violence. Some strategies are informal, (e.g. speaking with friends), while others are formal, (e.g. seeking help from government or social services agencies). However, when a woman realizes that her partner's abuse will not stop without outside intervention and she needs to take decisive actions, calling the police can be one of her first formal responses.<sup>7</sup> Indeed, appropriate police intervention has been found to have a significant impact in lowering the rate of subsequent domestic violence.<sup>6</sup> However, scholars have found that police have not always fulfilled their protective role due to prejudice, call screening, gender bias, language barriers, and lack of culturally competent training and understanding about the life experiences of immigrant communities and domestic violence victims.<sup>8</sup>

At the same time, many immigrants have a strong distrust of the police due to negative perceptions or experiences with police in their countries of origin

<sup>7</sup> and experiences of racism and prejudice with the police in the United States.<sup>8</sup> When this lack of

<sup>5</sup> Leslye E. Orloff, Societal Issues and Family Violence, in THE NATIONAL CONFERENCE ON FAMILY VIOLENCE: HEALTH AND JUSTICE CONFERENCE PROCEEDINGS, 1994, at 67, 70 (AMA).

<sup>7</sup> Giselle Aguilar Hass, Mary Ann Dutton and Leslye Orloff, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and y Implications*, DOMESTIC VIOLENCE: GLOBAL RESPONSES, 90-113 (AB Academic Publishers, Great Britain, 2000). CALL NURA TO GET ORIGINAL CITE FROM LIFE TIME ARTICLE

<sup>6</sup> See Raymond Paternoster, Ronet Bachman, and Robert Brame & Lawrence Sherman, *Do fair procedures matter? The effect of procedural justice on spouse assault*, LAW AND SOCIETY REVIEW 31,1 (1997); E. S. Buzawa and C.G. Buzawa, D *Domestic Violence: The Criminal Justice Response*, Newbury Park, California, 1990.

<sup>8</sup> Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 B.C. THIRD WORLD L.J. 231 (1994); Daniel E. Georges-Abeyie, *Symposium: Law Enforcement and Racial and Ethnic Bias*, 19 FLA. ST. U.L. REV 717, 720 (1992).

<sup>7</sup> UNITED STATES COMMISSION ON CIVIL RIGHTS, RACIAL AND ETHNIC TENSIONS IN AMERICAN COMMUNITIES: POVERTY, INEQUALITY AND DISCRIMINATION, VOLUME I: THE MOUNT PLEASANT

trust is combined with fears including arrest, deportation<sup>9</sup> and retribution from their abusers,<sup>10</sup> it becomes clear why many battered immigrant women hesitate to contact the police to report abuse. These life experiences of battered immigrants require that police officers be more aware of the intersection of culture, law, gender, language barriers and victimization in handling domestic violence in immigrant families.

The call for change in police relationships with immigrants who experience domestic violence is particularly important in light of the changing immigrant demographics in the U.S. The rate of immigrants entering the United States has tripled over the past generation, and the 1990s witnessed the largest influx of immigrants to date.<sup>11</sup> The immigrant population now extends beyond people who are foreign born to include the children of these families. In the year 2000, 20% of school-aged children had immigrant parents,<sup>12</sup> and it is estimated that by the year 2040, 27% of the U.S. population will be immigrants or the children of immigrants.<sup>13</sup>

It is critical to realize that the sheer increase in the number of persons immigrating to the United States means that geographic areas of the U.S. which typically have not had significant immigrant populations are now being called upon to respond to the needs of diverse populations of immigrants and refugees who are new arrivals in the United States. While the majority of

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REPORT 75 (1993); Orloff, *supra* note 2, at 70.

<sup>9</sup> See Kevin Pimentel & Ronnie Rhoe, *Asian American: Greatest Hits A Review of Angelo Ancheta's Race, Rights, and the Asian American experience*, 4 MICH. J. RACE & L. 169 (FALL 1998); Flo Messier, *Alien Defendants In Criminal Proceedings: Justice Shrugs*, 36 AM. CRIME L. REV. 1395, (FALL 1999); see generally *Supplement Respecting Diversity: Responding to Underserved Victims of Crime*, NVAA (2000) at <http://www.ojp.usdoj/ovc/assist/nvaa2000/academy/H-8-DIVR.htm>

<sup>10</sup> Dutton, *supra* note 2.

<sup>11</sup> Richard A. Berk, Sarah Fenstermaker, Phyllis J. Newton, & Donileen R. Loseke, *Cops on Call: Summoning the Police to the Scene of Spousal Violence*, 18 LAW & SOCIETY REV. 479 (1984); JULIE E. SAMUELS & STEPHEN B. THACKER, NATIONAL INST FOR JUSTICE & CDC, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE 50 (2000); CALLIE MARIE RENNISON & SARAH WELCHANS, U.S. DEP'T OF JUSTICE, INTIMATE PARTNER VIOLENCE 7 (2000).  
<sup>12</sup> MICHAEL FIX & WENDY ZIMMERMAN, THE URBAN INSTITUTE, THE INTEGRATION OF IMMIGRANT FAMILIES iii (2000).

<sup>13</sup> *Id.* at iv.

<sup>14</sup> Michael Fix and Jeffrey Passel. IMMIGRATION AND IMMIGRANTS: SETTING THE RECORD STRAIGHT. 40 (The Urban Institute 1994).

immigrants live<sup>14</sup> in the West<sup>9</sup> and the South<sup>10</sup>, immigrants now have an increasingly significant presence in the Northeast<sup>11</sup> and Midwest<sup>12</sup>. This influx of immigrants is also affecting rural areas in which greater numbers of immigrant families are settling in communities that have not historically been home to immigrant populations. As the immigrant population becomes an increasingly dominant portion of American society, it is critical that police officers learn to work with all types of battered immigrant and refugee populations in order to effectively help them counter, reduce and hopefully bring an end to the domestic violence they experience.

## II. Overview of Police Interactions With Minority Communities

The historic record of policing in minority communities in the U.S. leaves a lot to be desired..

<sup>13</sup> As the U.S. population becomes increasingly diverse,<sup>18</sup>

the need for adequate police training in effectively addressing issues that affect minority populations becomes more important. Due to issues such as lack of language capacity, training, budgetary support, understanding, and cultural competency reports of police violence and discrimination against and indifference towards the safety of minorities have increased.

### A. Police Interactions With Immigrant Populations

<sup>14</sup> LISA LOLLOCK, U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, THE FOREIGN-BORN POPULATION IN THE UNITED STATES, 2 (2001).

<sup>9</sup> Id. Lisa Lollock, 39.9% of the population in the Western United States are immigrants.

<sup>10</sup> Id. 26.8% of the total population living in southern states are immigrants.

<sup>11</sup> Id. Now constituting 22.6% of the total population in the Northeast.

<sup>12</sup> Id. The proportion of the population in the Midwest who are immigrants has risen to 10.7%.

<sup>13</sup> Armando, Morales. Ando Sangrando (I am Bleeding): A Study of Mexican American Police Conflict. La Puente: Perspective Publication. Kukendall, Jack L. 1970 "Police and Minority Groups: Towards A Theory of Negative Contact." Police 15 (Sept.Oct.):47-56

<sup>18</sup> *Overview of Race and Hispanic Origin, Census 2000* at

<http://www.census.gov/prod/2001pubs/c2kbr01-1.pdf> (reporting that 75% of all those who responded recorded their race as white alone, 13% reported as Hispanic alone, 12 % reported as Africa-American or Black alone, 4% responded Asian alone, just under 1% responded as only American Indian or Alaskan Native, 0.1% indicated Native Hawaiian or other Pacific Islander alone, 5.5% of respondents indicated some other race alone, and 2.4% of respondents reported two or more races.); see also, Michael Fix & Jeffrey S. Passel, THE URBAN INST., IMMIGRATION AND IMMIGRANTS: SETTING THE RECORD STRAIGHT 39-40 (1994), at <http://www.urban.org/pubs/immig/immig.pdf>, (stating that it is expected that 27% of Americans will either be foreign-born immigrants or first generation Americans by 2040).

Issues of race, class, and ethnicity have always been at the forefront of discussions about the criminal justice system.<sup>19</sup> All branches of the United States government—judicial, legislative, and executive—have a history of racism.<sup>20</sup> This history of racial prejudice within the executive branch is often exemplified through the actions of police officers. The history of racism against African-Americans is clear from Jim Crow laws, segregation, and racial profiling.<sup>21</sup> Discriminatory practices by police officers have also extended to various immigrant populations who are too often viewed by police as persons not legally residing in the United States and suffering from a cultural lag. These assumptions, combined with the fact that newer immigrants are often living in poverty,<sup>14</sup> have fostered the image that immigrants pose a problem and a danger to U.S. societal fabric.<sup>22</sup>

<sup>19</sup> See generally David Cole, *NO EQUAL JUSTICE: RACE AND CLASS IN THE AMERICAN CRIMINAL JUSTICE SYSTEM*, New York, NY: The New Press (1999); Carolyn Wolpert, *Considering Race and Crime: Distilling Nonpartisan Policy From Opposing Theories*, 36 AM. CRIME L. REV. 365 (SPRING 1999); Andrew Leipold, *Symposium on Race and Criminal Law: Objective and Subjective Bias Some Problems of Discriminatory Intent in Criminal Law*, 73 CHI.-KENT L. REV. 559 (1998); Malia Brink, *Symposium: Race Crime & the Constitution: Forward*, 3 U. PA. J. CONST. L. 1 (FEB. 2001).

<sup>20</sup> See generally *Loving v. Virginia*, 388 U.S. 1 (1967); *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan J. dissenting); Chinese Exclusion Act, Act of May 6, 1882, ch. 126, 22 Stat. 58,

repealed by Chinese Exclusion Repeal Act of 1943, ch. 344, 57 Stat. 600; Earl M. Maltz, *Citizenship and Constitution: A History of the Supreme Court's Alienage Jurisprudence*, 28 ARIZ. ST. L.J. 1135 (WINTER 1995).

<sup>21</sup> See *Plessy*, *supra* note 8; *Dred Scott v. Sanford*, 60 U.S. 393 (1856); *Korematsu v. United States*, 323 U.S. 214 (1944); Joseph Gordon Hylton, *Evolving Voices in Land Use Law: A FESTSCHRIFT IN HONOR OF DANIEL R. MANDELKER*, Part I: Historical Background: Chapter 1: The Supreme Court: *relude to Euclid: The United States Supreme Court and the Constitutionality of Land Use Regulation, 1900-1920*, 3 WASH. U.J.L. & POL'Y 1 (2000); *United States v. Adkins*, 2001 U.S. App. LEXIS 199.

<sup>14</sup> Although newly immigrated families have higher poverty rates than the general U.S. population, immigrant earnings over time grow rate, which surpasses the growth rate for native-born families. Harriet Orcutt Duleep, *Immigrant Earnings Growth 1960-1990: Initial Insights From Longitudinal Data on Individuals*.

<http://gsbwww.uchicago.edu/research/workshops/wae/Duleep.pdf>. Visited February 11, 2002; Incomes of households headed by naturalized citizens who have lived in the U.S. for 10 years or more slightly exceeds that of native U.S. citizens. Michael Fix, Wendy Zimmerman and Jeffery S. Passel, *Integration of Immigrant Families in the United States* p. 21 (The Urban Institute, Washington, D.C., July 2001).

<sup>22</sup> See Mark D. Rosenbaum & Daniel P. Tokaji, *Healing the Blind Goddess: Race and Criminal Justice*, 98 MICH. L. REV. 1941 (MAY 2000); see also David Cole, *RACE AND CLASS IN THE AMERICAN CRIMINAL JUSTICE SYSTEM*, New York: The New Press (1999). Immigrants who enter the United States without permission from the Immigration and Naturalization Service and those who overstay their immigration visas have not violated U.S. criminal laws. The proper terminology to refer to this portion of the non-citizen population in the U.S. is "undocumented." They are persons who currently do not have documentation from the Immigration and



The relationship between police officers and immigrant populations is one that has been strained for a variety of reasons. Unguided and untrained police action against immigrant populations has often resulted in the violation of the rights of citizens, lawful residents, and other noncitizens.<sup>23</sup> Some of the most brutal acts of violence and police brutality have occurred against immigrants.<sup>24</sup> However, overt physical violence has not been the only negative response by police in their interactions with immigrant populations. There have been a number of cases where police officers, because of their own prejudices or simple lack of knowledge, have arrested, harassed and accused immigrants of various crimes and threatened them with deportation.<sup>25</sup>

Police officers use discretion in deciding to arrest. This discretion often turns into selective law enforcement, and encompasses the use of coercive force and/or verbal threats when they come into contact with immigrants.<sup>26</sup> An officer's perception of a person's race, ethnicity, and social class can (and often does) determine what legal enforcement measures will be used in any given instance.<sup>27</sup> These perceptions may be based on personal experience and/or stereotypes that an individual police officer has with regard to a particular ethnic group.<sup>28</sup> These same problems of

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Naturalization Service giving them legal permission to live and work in the United States.

<sup>23</sup> Linda Reyana Yanes & Alfonso Soto, *Local Police Involvement in the Enforcement of Immigration Law*, 1 TEX. HISPANIC J. LAW & POL'Y 9 (1994), United States Commission on Civil Rights, *Supra* note 7 at 143-145.

<sup>24</sup> See, e.g. Michael Cooper, *Officers in Bronx Fire 41 Shots, and an Unarmed Man is Killed*, NY TIMES, FEB 5, 1999, at B5; Scott Glover & Matt Lait, *Police in Secret Group Broke Law Routinely Transcripts Say*, LA TIMES, FEB 10, 2000, at A1; *Mixed Verdict in Louima Torture Case*, STAR TRIB. (Minneapolis-St. Paul) June 9, 1999, available in WL 4559149.

<sup>25</sup> See e.g. *Gonzales v. City of Peoria*, 537 F. SUPP. 793 (D. Ariz., 1982) (One citizen and four lawful resident plaintiffs who challenged police arrests made under the Immigration and Nationality Act in violation of their civil rights); see also *Valasquez v. Senko*, 643 F. SUPP. 1172 (N.D. Cal. 1986) (Raid on Latino business which lead to violations of civil rights and the arrest of US citizens and lawful permanent residents). See also, Leslye Orloff, Jennifer Lewkowski and Rachel Little, *Ensuring the Battered Immigrants Who Seek Help from the Justice System Are Not Reported to the INS*, in Leslye E. Orloff and Rachel Little, *SOMEWHERE TO TURN: MAKING DOMESTIC VIOLENCE SERVICES ACCESSIBLE TO BATTERED IMMIGRANT WOMEN*, A "HOW TO" MANUAL FOR BATTERED WOMEN'S ADVOCATES AND SERVICE PROVIDERS, 278-288 (May 1999).

<sup>26</sup> See generally *Freeman v. City of Santa Ana*, 68 F.3d 1180 (C.D. Cal. 1995).

<sup>27</sup> Daniel E. Georges-Abeyie, *Symposium: Law Enforcement and Racial and Ethnic Bias*, 19 FLA. ST. U.L. REV 717, 720 (1992); United States Commission on Civil Rights, *supra* note 7, at 20.

<sup>28</sup> See Trish Oberweis & Michael Mucheno, *Policing Identities: Cop Decision Making and the Constitution of Citizens*, 24 LAW & SOC. INQUIRY 897 (FALL 1999).

perception and stereotyping that affect and strain the relationship between immigrants and police officers also affect and strain the relationship between police officers and immigrant victims of domestic violence. Researchers have found that the patriarchal occupational subculture of police officers or departments often leads to individual attitudes which tend to blame the victim, project blame on other institutions, and foster negative images of women as manipulative individuals.<sup>29</sup> This does not mean, however, that these perceptions cannot be changed through adequate training and education, access to interpreters who are trained in domestic violence, and the development and implementation of appropriate policies.

The dire need for culturally appropriate law enforcement training has become more evident in the aftermath of the September 11<sup>th</sup> 2001 tragedy. The sudden thrust of law enforcement into the day to day realities of diverse cultural groups living in the U.S. has more than revealed how antiquated police training and police department policies for intervening in domestic violence cases of immigrant victims are. When stereotyping, culturally insensitive, xenophobic and gender biased attitudes persist among police officers and are unmitigated by appropriate training and continuing education, the daily ordeals battered immigrant women endure when contacting law enforcement for service are exacerbated.

#### **B. Police Interactions With Victims of Domestic Violence**

Historically domestic violence has been viewed as a private problem.<sup>30</sup> This view has gradually begun to change with activism and some legislation, but the change in perspective has been slow in coming. Police intervention in domestic violence cases has historically been minimal in some instances because of this perception.<sup>31</sup> The tools used by law enforcement to protect victims were not often used effectively due to the police outlook on domestic violence as a private

<sup>29</sup> See George Rigakos, *Constructing the symbolic complainant: Police subculture and the nonenforcement of protection orders for battered women*. VIOLENCE AND VICTIMS, 10,3 (1995).

<sup>30</sup> See *Symposium on Reconceptualizing Violence Against Women By Intimate Partners: Critical Issues: Domestic Violence as a Human Rights Issue*, 15 HUM. RTS. Q. 36 (1993).

<sup>31</sup> See Barbara J. Hart, *Arrest: What's the Big Deal*, 3 WM. & MARY J. WOMEN & L. 207 (1997).

matter.<sup>15</sup> Protection orders have not always been treated seriously and a tendency to arrest victims has been related to police finding violent acts by the perpetrators justifiable.<sup>32</sup> The response to this lack of attention eventually led to the development of mandatory and pro-arrest policies that take away the discretion and power from police officers in deciding whether or not to arrest the batterer.

<sup>33</sup> Much emphasis has been placed on mandatory arrest as a primary form of police intervention in domestic violence cases, but this singular focus can prove to be detrimental to battered women whose life experiences are determined by issues of race, class, ethnicity, and immigration status.<sup>34</sup>

Violence Against Women Act (VAWA) passed by Congress in 1994 and improved in 2000,<sup>16</sup> sought among many goals to reform the manner in which law enforcement officers intervened in domestic violence cases. VAWA provided funding, technical assistance, development of model training programs and support for police department units that specialized in appropriate response to domestic violence calls for help.<sup>17</sup> Overall, although there has been significant improvement in police response to domestic violence in some communities following the passage of VAWA, police response to domestic violence in many communities continues to be lacking. The personal attitudes

<sup>15</sup> E. Pleck *Domestic Tyranny: The Making of American Social Policy Against Family Violence From Colonial times to the Present*. New York: Oxford University Press., 1987.

<sup>32</sup> See Daniel Sanders, *The tendency to arrest victims of domestic violence: A preliminary analysis of officer characteristics*, JOURNAL OF INTERPERSONAL VIOLENCE, 10,2 (1995).

<sup>33</sup> See generally Joan McCord, *Deterrence of Domestic Violence: A Critical View of Research*, 29 J. OF RESEARCH IN CRIME & DELINQUENCY 229 (1992); Lawrence W. Sherman, *The Influence of Criminology on Criminal Law: Evaluating Arrests for Misdemeanor Domestic Violence*, 83 J. CRIME L. & CRIMINOLOGY 1 (1992); Jane Sadusky, *Violence Against Women Online Resources, Working Effectively with the Police: A Guide for Battered Women's Advocates*, at <http://www.vaw.umt.edu/BW/P/policyV.htm>.

<sup>34</sup> See generally Miriam M. Ruttenberg, *A feminist Critique of Mandatory Arrest: An Analysis of Race and Gender in Domestic Violence Policy*, AM. UNIV. J. OF GENDER & L. 2 (1994); Gena Durham *The Domestic Violence Dilemma: How Our Ineffective and Varied Responses Reflect Our Conflicted Views of the Problem*, 71 SO. CAL. L. REV. 641 (1998).

<sup>16</sup> The Violence Against Women Act of 1994 (VAWA 1994) in the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994) and the Violence Against Women Act of 2000 in the Victim's of Trafficking and Violence Protection Act of 2000 Pub. L. No. 106-386, 114 Stat. 1464 (2000).

<sup>17</sup> VAWA 2000 section 1104; Section 40231 of The Violence Against Women Act of 1994 (VAWA 1994) in the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994) Part U Section 2101(b)(3).

of some police officers about what domestic violence is (a private problem) and how it should be handled (through mediation rather than arrest or formal charges) has the effect of marginalizing victims of domestic violence and even disregarding their requests for help.<sup>35</sup> These problems of lack of appropriate response from the police and police department policies to domestic violence are further compounded when the battered woman is an immigrant. This can occur because the police do not have the capacity to communicate effectively with the immigrant victim in her own language, the police may use her abuser or her children to translate for her, and/or police may credit the statements of her citizen spouse or boyfriend over her statements to the police due to gender, race or cultural bias.

### C. Police Interaction With Battered Immigrant Women

Battered immigrant women, especially those of color, face multiple barriers when trying to access services to aid their escape from violent relationships or try to stop the abuse.<sup>36</sup> The treatment of immigrants by police in general influences whether battered immigrant women will trust the police and call for help.<sup>37</sup> The interaction between police officers and immigrants has been a tenuous

<sup>35</sup> See Joanne Belknap, *Law Enforcement Officers' Attitudes About the Appropriate Responses to Women Battering*, 4 INT'L REV. OF VICTIMOLOGY 47 (1995); see also Randall Armentrout, *Car 54 Where Are You? Police Response to Domestic Violence Calls*, 40 DRAKE L. REV. 361 (1991).

<sup>36</sup> See generally Sandra D. Pressman, *The Legal Issues Confronting Conditional Resident Aliens Who are Victims of Domestic Violence: Past, Present, and Future Perspectives*, 6 MD. J. CONTEMP. L. ISSUES 129 (1995); Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 No. 2 GEORGETOWN JOURNAL ON POVERTY LAW & POLICY 245, 249-253 (2000); Leslye E. Orloff and Dave Nomi, *Identifying Barriers: Survey of Immigrant Women and Domestic Violence in the DC Metropolitan Area*, POVERTY AND RACE 9-10 (Jul/Aug 1997); Mary Ann Dutton and Giselle Aguilar Hass, *Use of Expert Testimony Concerning Battering and Its Effects on Immigrant Women*, in Mary Ann Dutton, et al., DOMESTIC VIOLENCE AND IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT: A TRAINING MANUAL FOR ATTORNEYS AND ADVOCATES, Appendix C, (2000); Leslye E. Orloff and Rachel Little, *SOMEWHERE TO TURN: MAKING DOMESTIC VIOLENCE SERVICES ACCESSIBLE TO BATTERED IMMIGRANT WOMEN*, A "HOW TO" MANUAL FOR BATTERED WOMEN'S ADVOCATES AND SERVICE PROVIDERS, 279 (May 1999); Leti Volp, *WORKING WITH BATTERED IMMIGRANT WOMEN: A HANDBOOK TO MAKE SERVICES ACCESSIBLE* 16-20 (1995); Catherine Klein and Leslye Orloff, *Providing Legal Protection for Battered Women: An Analysis of Statutes and Case Law*, 21 No. 4 HOFSTRA L. REV. 801, 1019 (Summer 1993) (Hereinafter Hofstra).

<sup>37</sup> Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 B.C. THIRD WORLD L.J. 231 (1994).

one in which immigrants have been arrested and threatened with deportation for minor criminal violations based largely upon the fact that they are immigrants. Domestic violence, especially when perpetrated upon a person of the same race or ethnicity as the batterer, is not perceived as unusual within the immigrant communities by law enforcement officials.<sup>38</sup> Violence is often viewed by officers as being a part of the immigrant culture and the lives of immigrant women, leading some police officers to conclude that domestic violence is not a crime when the victim is an immigrant.<sup>39</sup> Other times, they may misperceive the victim's hesitancy to get involved with the legal system as a sign that she may not follow through on the prosecution of the criminal case.<sup>40</sup> In light of these problems and practices, it is not surprising that anecdotal evidence from advocates working with immigrant victims of domestic violence reports that the number of arrests for domestic violence within immigrant communities is relatively low.<sup>41</sup>

Battered immigrant women's lack of trust in the system and its officers intersects with many other fears: fear of deportation,<sup>42</sup> fear of retribution by their abusers, fear of being the one arrested and separated from her children, and fear of future economic, social and/or employability repercussions. These issues preclude many battered immigrant women from requesting the help they need to counter the domestic violence they are experiencing in their lives.<sup>43</sup> These barriers become even more pronounced when the batterer is a U.S. citizen and the victim is a non-citizen.<sup>44</sup> Police

<sup>38</sup> *Id.*

<sup>39</sup> See generally Linda Ammons, *Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African-American Woman and the Battered Woman Syndrome*, 1995 WIS. L. REV. 1017 (1995); Rivera, *supra* note 37.

<sup>40</sup> The battered immigrant woman's hesitancy may be due to the law enforcement officer's inability to communicate with her using an impartial interpreter. She may believe her abuser's threats that if she cooperates with law enforcement against him, he will have her deported or will retaliate against her in other ways.

<sup>41</sup> These anecdotal experiences are confirmed by the research findings reported in this article.

<sup>42</sup> Leslye Orloff, Jessica Cundari and Erika Esterbrook, *NEW DANGERS FOR BATTERED IMMIGRANTS: THE UNTOLD EFFECTS OF THE DEMISE OF 245(i)* (January, 1999) (Collection of stories of battered immigrant victims experiences of domestic violence perpetrated against them by their U.S. citizen or lawful permanent resident spouses illustrate how fears of deportation prevented many from calling the police for help).

<sup>43</sup> Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 No. 2 GEORGETOWN JOURNAL ON POVERTY LAW & POLICY 243, 251, 256 (2000).

<sup>44</sup> Hofstra at 1022-1026.

officers are more likely to believe the citizen batterer when he contradicts the battered immigrant woman's accusations of violence.<sup>20</sup> In many instances, the fact that battered immigrant women have no legal immigration status or documentation in the U.S. is a result of the batterer's use of her immigration status as a weapon of abuse.<sup>44</sup>

In certain instances, the police in effect act as the gatekeepers to the judicial system. Their discretion is the determining factor in deciding whether immigrant women victim's will gain access to the system and be able to find protection from the violence perpetrated against them in their homes. In many cases, unfortunately, the most difficult hurdle for battered immigrant women is that of police indifference and inaction.<sup>45</sup> This inaction can act as an almost impassible barrier for many battered immigrant women to overcome, leaving them trapped and without any legal remedies.

#### **Research Findings on Immigrant Victims of Domestic Violence and Police**

To better understand the barriers immigrant women face that prevent them from calling the police for help and how immigrant victims are treated by police when they call, data collected in a survey conducted among Latina immigrant women in the Washington D.C. metropolitan area was analyzed.

#### **Domestic Violence Definition Used in the Research**

<sup>20</sup> See generally, Leslye Orloff, Jessica Cundari, Erica Esterbrook, New Dangers for Battered Immigrants: The Untold Effects of the Demise of 245(i) (Ayuda, Washington, D.C. 1999); Robin L. Camp, Deeana Jang, Debbie Lee, Bill Tamayo, Leni Marin and Leslye Orloff, Untold Stories: Cases Documenting Abuse by U.S. Citizens and Lawful Residents on Immigrant Spouses. (Family Violence Prevention Fund, San Francisco, November 1993).

<sup>44</sup> Tien-Li Loke, *Trapped in Domestic Violence: The Impact of United States Immigration Laws on Battered Immigrant Women*, 6 B.U. PUB. INTL. L.J. 589, 591 (WINTER 1997); See also Ryan Lilienthal, *Old Hurdles Hamper New Options for Battered Immigrant Women*, 1592 BROOKLYN L. REV. 1595 (WINTER 1996); Dutton, Mary Ann, Leslye E. Orloff, and Giselle Aguilar Hass, *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*. 7 GEORGETOWN JOURNAL ON POVERTY LAW & POLICY 245 at 293 (Summer 2000) (stating that "threats of deportation are very powerful tools used by abusers of immigrant women to keep them in abusive relationships and prevent them from seeking help.")

<sup>45</sup> Donna Coker, *Piercing Webs of Power, Identity, Resistance, and Hope in Laterit Theory and Praxis; Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009 (Summer 2000).

Three separate abuse measures were used in the study - physical, sexual, and psychological. In addition, the researchers constructed a violence measure ("domestic violence offense") to examine those forms of abuse that as a matter of law constitutes domestic violence under the criminal and protection order laws of all states.<sup>21</sup> In addition, we constructed a similar category to identify those acts of violence that constitute a "child abuse offense." The types of acts that were included in the categories of "domestic violence offense" against an adult victim or a "child abuse offense" against a child victim included: assaults (hit, pushed, scratched, pulled hair, with fist, kicked, choked, bit, burned); weapons (attacked, hit, threatened or shot with a gun, knife, machete or other weapon); kidnapping (locked victim or her children in the house or a room); sexual assault (rape, sexual assault, assault during pregnancy, incest, forced sexual relations, child sexual assault), criminal threats (threats to kill, bodily harm, harm victim, her children or her family members); and attempted assaults (drove a car at the victim or her children, tried to run over the victim or her children, drove in a manner that endangered her or her children, threw objects at her or her children).

Visible physical injury. A visible physical injury scale included cuts, visible bruises, and other wounds and injuries that made it visibly difficult for the victim to move. If such injuries are present, an arrest should occur as a matter of law because such injuries provide evidence of a domestic violence offense.

Other evidence. An "other evidence" measure was constructed which included torn clothing, property in disarray, police witnessing victim abuse and police hearing threats. An "other evidence" score refers to the number of other types of evidence present that the victims reported to be at the scene when the police arrived.

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<sup>21</sup> It is important to note that for the purposes of this part of the research analyzing when battered immigrants called the police and police response to calls from battered immigrants, researchers included in the definition of domestic violence offense only those offenses that under state criminal and protection order laws would be considered domestic violence. Some forms of domestic violence that are sufficient to grant immigrant victims protection under immigration laws most notably extreme cruelty, were not included in this domestic violence offense definitions because under many state law extreme cruelty would not be covered under state criminal domestic violence laws. See, Hofstra pp. 848-866.

Crime scene evidence. A crime scene evidence variable was constructed as a total score representing visible physical injury and other evidence since both types constitute viable evidence in a crime scene investigation.

Immigration status. Immigration status was divided into three categories: stable, temporary and undocumented. The "stable" immigration status category contained citizens, naturalized citizens and lawful permanent residents. The "undocumented" category consisted of persons without legal permission to be in the United States either because they had entered without inspection or because they had entered lawfully and had overstayed or violated the terms of their visa. The "temporary" immigration status category included cases where the Immigration and Naturalization Service (INS) was aware of the presence of the immigrant and the immigrant had legal permission from the INS to live and, in most cases, work in the United States. However, persons in this immigration category had forms of immigration status that were not permanent. The status was limited as to length of time, was dependant upon a specific familial or employment relationship or was designed to offer temporary relief to persons due to conditions in their home country.

#### Survey Results<sup>22</sup>

##### Demographics

The sample consisted of 230 immigrant women who had experienced violence or abuse from a past or current intimate partner. Half of respondents were between the ages of 30 and 41 years (50.9%, n = 86), with 40.8% (n = 89) under 30 years and only 9.2% (n = 20) 42 years or older.<sup>47</sup> Half of the women reported not being involved in a current intimate relationship at the time of the survey (50.0%, n = 109). Most of the participants were employed (64.2%, n = 138) either full or part-time, the majority of whom (60.7%, n = 68) reported an average annual income below \$9,000. In addition,

<sup>22</sup> The authors of this article are continuing to analyze the wealth of data collected in this survey. In a future article the authors plan to include information from a multivariate statistical analysis of some of the data discussed in this paper along with reporting on other survey findings.

<sup>47</sup> Not all immigrant women survey participants answered all questions asked by interviewers. When these respondents did not answer any particular questions the results are missing data. This missing data explains why figures do not add up to n = 230 in these and other survey data analyses.



more than three-quarters of the women had very little or no English speaking skills (75.6%,  $n = 169$ ) and 20% ( $n = 45$ ) reported very little or no Spanish reading literacy.

The immigration status of the respondents in the sample was primarily undocumented (44.4%,  $n = 95$ ) but also included temporary (28.5%,  $n = 61$ ) and stable (27.1%,  $n = 58$ ) status categories. The immigration status of respondents' spouses included a greater proportion of stable (40.7%,  $n = 59$ ) compared to respondents and somewhat fewer undocumented (39.3%,  $n = 47$ ) and temporary (20%,  $n = 29$ ).

#### **Calls to Police**

Of the sample, 27.0% ( $n = 53$ ) indicated that at some point while in the United States they had called police for assistance due to violence or abuse from an intimate partner. Among these callers, the number of calls made ranged from 1 to 10. Of those who called, nearly an equal number of respondents reported they had called the police once (27.3%,  $n = 12$ ), twice (22.7%,  $n = 10$ ), three times (22.7%,  $n = 10$ ), and more than three times (27.2%,  $n = 12$ ).

#### **Factors Related to Battered Women's Calls to Police**

##### **Demographics**

Overall, 65.1% ( $n = 125$ ) of the respondents reported living in the United States for three or more years. These women were more likely to call the police than women who had been in the U.S for less time (32.8% vs. 16.4%,  $\chi^2 = 5.93$ ,  $df = 1$ ,  $192$ ,  $p \leq .01$ ). Overall, 47.2% ( $n = 91$ ) of the women reported current involvement in an intimate relationship. These women were less likely to call police than women who were currently not in an intimate relationship (20.9% vs. 33.3%,  $\chi^2 = 3.74$ ,  $df = 1$ ,  $193$ ,  $p \leq .05$ ).

Battered women who had a stable immigration status were more likely to call police (43.1%) than those with either a temporary status (20.8%) or who were undocumented (18.8%) ( $\chi^2 = 10.7$ ,  $df = 2$ ,  $184$ ,  $p \leq .01$ ). There was no significant effect on women's calls to police depending on the immigration status of their spouse, their intimate partner or the father of respondents' children on women's calls to police. Variables found not to be related to immigrant women respondents' calling

the police included respondents' education, income, English language ability, Spanish language ability, current employment, and whether the spouse had presented immigration papers for the respondent.

#### Violence-Related Variables

Overall, 84.1% (n = 190) of the immigrant women respondents reported abuse that involved physical and/or sexual violence. The remaining 15.9% (n = 36) of women reporting abuse reported experiencing events that constitute psychological abuse only. As expected, the *type of violence* that women experienced was related to whether or not they called police. Women who were physically and/or sexually abused were more likely to call police than women who reported psychological abuse only (31.5% vs. 5.9%,  $\chi^2 = 9.34$ ,  $df = 1$ ,  $196$ ,  $p \leq .01$ ). Overall, 12% (n = 22) of the sample had been abused by more than one intimate partner, however there was no difference in the proportion of multiply abused women who called police compared to women who had been abused by one partner only.

Violent acts were coded based on whether or not they involved *severe physical abuse*,<sup>48</sup> defined as being hit, punched, kicked, attacked with a knife, choked, bitten, or hit with an object. In this study, 66.9% (n = 71) overall reported experiencing severe violence. Those who experienced severe physical abuse also reported calling police more often than those who did not (29.7% vs. 4.0%,  $\chi^2 = 13.23$ ,  $df = 1$ ,  $151$ ,  $p \leq .001$ ). Interestingly, 93.8% of those who called police had been severely abused even though severely abused women account for only 66.9% of the immigrant women respondents in the survey.. Violent acts were also coded according to whether or not they would constitute a domestic violence offense in most jurisdictions. Overall, the 81.1% (159) of women who reported experiencing domestic violence that would constitute a domestic violence offense were more likely to call police than those who did not (32.7% vs. 2.7%,  $\chi^2 = 13.69$ ,  $df = 1$ ,

<sup>48</sup> Giselle Aguilar Hass, Mary Ann Dutton and Leslye Orloff, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, DOMESTIC VIOLENCE: GLOBAL RESPONSES, 90-113 (AB Academic Publishers, Great Britain, 2000).

196,  $p \leq .001$ ). Again, 98.1% ( $n = 52$ ) of all women who called the police had experienced a domestic violence offense, even though this sample included only 81.1% ( $n = 159$ ) of women with domestic violence offenses overall.

Two additional variables were examined only among those women who called the police. Overall, 59.6% ( $n = 21$ ) reported some form of visible *physical injury* at the time they called police. Specifically, 51.9% ( $n = 21$ ) reported having bruises, 13.7% ( $n = 7$ ) having cuts, 11.5% ( $n = 6$ ) having wounds, and 7.7% ( $n = 4$ ) having wounds that made it difficult to move. Those who reported some form of physical injury also reported calling police more often than those women who reported no physical injury (68.9% vs. 0%,  $\chi^2 = 11.94$ ,  $df = 1$ , 52,  $p \leq .001$ ). Thus, 100% of calls to police were from women who were injured, even though injured women comprised only 81.5% of the overall sample. Further, women who reported being injured by domestic violence sometime in the past (overall, 79.9%,  $n = 147$ ) were more likely to call police than women who reported never having been injured in the past (32.7% vs. 13.5%,  $\chi^2 = 5.28$ ,  $df = 1$ , 184,  $p \leq .05$ ).

The extent to which *other types of evidence* were present was also studied only among women who called the police. In 51.1% ( $n = 23$ ) of the cases in which women called police, evidence other than physical injury was present at the scene when the police arrived such as torn clothing, property in disarray, or police witnessed violence or threats. For all cases reported to police was present at the crime scene some other type of evidence, 34.8% ( $n = 8$ ) reported more than one other type. Combining both injury and other types of evidence described above, 68.9% ( $n = 31$ ) of the respondents reported at least one of these types of *crime scene evidence*. Of those reporting some type of crime scene evidence, 19.3% ( $n = 6$ ) reported more than one type.

Respondents were asked about the amount of time that generally passed between abusive incidents. Overall, more than a third of the respondents 35.4%, ( $n = 70$ ) reported abuse experiences every one to two days, 27.3% ( $n = 54$ ) every 3 days to one week, 20.7% ( $n = 41$ ) weekly to monthly, and 16.7% ( $n = 33$ ) less often than once a month.

Those in the sample who reported experiencing abusive incidents every one to two days

called police more often (33.3%,  $n = 20$ ) than those who experienced violence between three days and one week (10.9%,  $n = 5$ ), but not significantly more often than those who experienced violence every one week and one month (31.4%,  $n = 11$ ) or more often than one month (37.9%,  $n = 11$ ;  $\chi^2 = 9.23$ ,  $df = 3$ ,  $170$ ,  $p \leq .05$ ).

Overall, 29.1% ( $n = 52$ ) reported that their *children had witnessed the domestic violence*. Mothers whose children had witnessed violence reported calling the police more often than mothers whose children had not witnessed the violence (63.5% vs. 37.8%,  $\chi^2 = 9.81$ ,  $df = 1$ ,  $179$ ,  $p \leq .001$ ). Overall, 22.8% ( $n = 22$ ) reported that a *child had never experienced abuse* sufficient to constitute a criminal offense. However, respondents called the police due to intimate partner violence at similar rates whether or not child abuse was also present.

#### Social Support

Overall, 90.7% ( $n = 135$ ) of respondents had talked to more than one person about their experience with domestic violence. Talking with more than one person was associated with a greater likelihood of calling police (31.9% vs. 0%,  $\chi^2 = 5.40$ ,  $df = 1$ ,  $147$ ,  $p \leq .01$ ). All (100%) of the women who called the police for help had spoken to someone else about the abuse prior to making any call to the police. Interestingly, however, while most women reported a “supportive” (87.1%,  $n = 115$ ) vs. a “negative” (12.9%,  $n = 17$ ) response from those with whom they talked, the type of response was not associated with the calling of police (33.3% and 33.6% for negative and supportive response, respectively).

#### Police Response

Among women who called police, 54.4% ( $n = 25$ ) reported that police responded within fifteen minutes. Other response times were between 16-30 minutes (26.1%,  $n = 12$ ), 31-60 minutes (6.5%,  $n = 3$ ), and an hour or more (14%,  $n = 6$ ). Upon arrival, in nearly one-third of all cases (31.1%,  $n = 14$ ) police never spoke to the woman, speaking instead to the abusive partner (11%,  $n = 5$ ) or to others (20%,  $n = 9$ ). About a third (34%,  $n = 16$ ) of the women reported that Spanish was spoken when police arrived. Finally, a little over a quarter (28.6%,  $n = 16$ ) of police calls resulted

in the arrest of the abusive partner.

#### Factors Related to Arrest

The only variable related to whether police made an arrest was whether the battered woman had a protection order at the time of the call. Nearly one-third of respondents in the study, 32.7% (n = 17), reported having a protection order in effect when they called police. Police were more likely to make an arrest when the victims reported having a protection order (50% vs. 20.7%,  $\chi^2 = 4.13$ ,  $df = 1$ , 45,  $p \leq .05$ ).

The crime scene evidence score (0 – 4), calculated as a sum of items in the crime scene evidence variable, showed no difference in cases in which arrest was vs. was not made. Nearly everyone who called police had experienced at least one form of violence that would constitute a criminal offense. Among those who experienced a form of violence that would legally constitute a criminal offense, police made an arrest only 29.6% (n = 16) of the time. Additionally, neither the respondents' nor the perpetrators' immigration status nor the respondent's English language ability were related to whether or not police made an arrest.

#### **Discussion**

##### **A. Factors That Influence Battered Immigrant Women's Contact With the Police**

Of all the battered immigrants surveyed, only 27% were willing to call the police for help in a domestic violence incident. Among those women that were physically and/or sexually abused as opposed to emotionally abused, 31.5% reported calling the police for help. Both of these reporting rates are much lower than reporting rates found by several national studies for domestic violence victims. A 1998 Department of Justice study reported that 53% of domestic violence victims report the abuse to the police<sup>54</sup> and a survey of shelter residents found that 58% of the victims reported the violence.<sup>55</sup> The results of this study provide insight into what might be some of

<sup>54</sup> RENNISON *supra* note 10, at 7.

<sup>55</sup> Martha L. Coulter & Kathryn Kuehnle, *Police-Reporting Behavior and Victim-Police Interactions as Reported by Women in a Domestic Violence Shelter* 14 No. 12, JOURNAL OF INTERPERSONAL VIOLENCE, 1290, 1290 (1999).

the reasons for this discrepancy in reporting rates. The difference most likely results from the roles that acculturation, having children who witnessed abuse and fear of deportation play for battered immigrants.

### 1. Acculturation

Acculturation is a process in which new immigrants begin to adapt to their new country.<sup>56</sup> The longer immigrants reside in the United States following immigration, the more accustomed to and knowledgeable about U.S. customs, laws and systems they become. This survey found in fact that the longer battered immigrants lived in the United States the more likely they were to try to access U.S. based systems of protection. Battered Latina immigrants surveyed who had been residing in the United States for more than three years were twice as likely to call the police for help during a domestic violence incident as were those who had been living in the U.S. for less than three years (32.8% vs. 16.4%). This significant gap in reporting suggests that acculturation may play an important role.<sup>56</sup>

Many immigrant women immigrate to the United States from countries in which the courts and police took made no efforts to offer protection to domestic violence victims.<sup>23</sup> Despite this fact and despite the fact that many experience isolation power and control tactics,<sup>24</sup> the longer immigrant women reside in the United States following immigration, they become more accustomed to and knowledgeable about U.S. customs, laws and justice and social services systems. It seems that, with

<sup>56</sup> Acculturation is the process of becoming adapted to a new or different culture including its patterns and customs. *See*, Webster's New World Dictionary (1980).

<sup>56</sup> Acculturation is the process of becoming adapted to a new or different culture including its patterns and customs. *See*, Webster's New World Dictionary (1980).

<sup>23</sup> Leslye E. Orloff, Societal Issues and Family Violence, *in* THE NATIONAL CONFERENCE ON FAMILY VIOLENCE: HEALTH AND JUSTICE CONFERENCE PROCEEDINGS, 1994, at 67, 70 (AMA); Brief of *Amici Curiae* in Support of Respondent's Appeal from the Decision of the Immigration Judge at 7, *INS vs. Vallabhaneni*, (A76 724 694).

<sup>24</sup> Out of the battered immigrants in the general population sample, 29% reported that their abusers were using isolation tactics as part of the psychological abuse they were experiencing. Giselle Aguilar Hass, Mary Ann Dutton and Leslye Orloff, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, DOMESTIC VIOLENCE: GLOBAL RESPONSES, 90, 104 (AB Academic Publishers, Great Britain, 2000).

time, immigrant battered women are able to develop more trust in the new system and a better understanding of their rights.

An important clue as to how some of this important acquiring of information and acculturation takes place appears to be from immigrant women talking to and sharing information with each other. Battered immigrant women in the current study who had talked with more than one person about the violence were significantly more likely to call the police during a domestic violence incident (31.9% vs. 0.0%). Battered immigrants who had spoken to no one about the abuse or who had only spoken to one person did not call the police for help even though they had suffered injuries in a domestic violence incident. This finding suggests that battered women tend to rely first on informal help-seeking strategies before moving to formal strategies such as calling the police.

## 2. The Victim's Fear that She Will Be Deported

Most importantly, the results of this survey suggest that a battered immigrant victim's immigration status made a significant difference in whether or not an immigrant domestic violence victim would call the police for help. In this study, battered immigrants with stable permanent immigration status were significantly more likely to call the police for help in a domestic violence case than other battered immigrant women (43.1 %). This reporting rate dropped to 20.8% for battered immigrants who were in the United States legally but on temporary non-immigrant visas, and further dropped to 18.8% if the battered immigrant was undocumented. These reporting rates are significantly lower than reporting rates of battered women generally in the United States, which range between 53%<sup>63</sup> and 58%<sup>64</sup>.

Fear of being reported to the INS and of subsequent deportation is one of the most significant factors preventing immigrant victims of domestic violence from seeking help from legal and social

<sup>63</sup> Martha L. Coulter & Kathryn Kuehnle, *Police-Reporting Behavior and Victim-Police Interactions as Reported by Women in a Domestic Violence Shelter* 14 No. 12, JOURNAL OF INTERPERSONAL VIOLENCE, 1290 (1999). Reporting rates for the general population of battered women in the United States are 53%.

<sup>64</sup> CALLIE MARIE RENNISON & SARAH WELCHANS, U.S. DEP'T OF JUSTICE, INTIMATE PARTNER VIOLENCE 7 (2000). (Reporting a 58% reporting rate for battered women in the United States)

service systems.<sup>50</sup> In many instances, U.S. immigration law formally ties the legal immigration status of an immigrant wife to the citizenship status of legal immigration status of her spouse.<sup>51</sup> Abusers of immigrant domestic violence victims actively use their power to control their wife's and children's immigration status together with fears about and threats of deportation as tools to keep their abused spouses and children from seeking help or from calling police to report the abuse.<sup>51</sup>

It is important to keep in mind that many battered immigrant women come from countries in which the police, the courts and the justice system can not be relied upon to protect battered women.<sup>56</sup> In some instances, the country has no laws that make domestic violence a crime or that offer protection to domestic violence victims. In other instances, a law exists, but it is not enforced particularly against abusers who are politically connected, have served in the military or the police force or who have sufficient economic means to avoid being held accountable.<sup>57</sup> Additionally, much of the information an immigrant woman has about the U.S. legal system may come from her abuser.

<sup>50</sup> Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 No. 2 GEORGETOWN JOURNAL ON POVERTY LAW & POLICY 245, 292-293 (2000).

<sup>51</sup> See e.g. INA section 204(a)(1) and 204(a)(2)(allowing citizens and lawful permanent residents to file with INS to confer legal permanent residency on their spouse and children; 8 C.F.R. 214.2(f)(3)(spouses and children may follow student visa holders on F visas); INA Section 101(a)(13)(H)(spouses and children of temporary skilled workers on work visas H 1-B, H-2-A, H-2-B, H-3 can receive H-4 visas); 8 U.S.C. 1101 (a)(13)(G) and (N)(spouses and children of diplomats. In each of the above listed cases the spouse or parent with the visa or other legal status has to choose to file for legal immigration status for their spouse or children.

<sup>51</sup> The legislative history of the Violence Against Women Act of 1994 found that "[m]any immigrant women live trapped and isolated in violent homes, afraid to turn to anyone for help. They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave." COMMITTEE ON THE JUDICIARY, REPORT ON THE VIOLENCE AGAINST WOMEN ACT TO ACCOMPANY H.R. 1133, H.R. Rep. No. 395, 103d Cong., 1st Sess. 26-7 (1993). The legislative history of the Violence Against Women Act of 2000 also underscores Congress's ongoing recognition of how immigration laws "may hinder or prevent battered immigrants from fleeing domestic violence safely and prosecuting their abusers by allowing an abusive citizen or lawful permanent resident to blackmail the abused spouse through threats related to the abuse of spouse's immigration status . . . if the abused spouse sought to leave the abuser or report the abuse."

MANAGER'S STATEMENT AND SECTION-BY-SECTION SUMMARY OF THE VIOLENCE AGAINST WOMEN ACT OF 2000 Congressional Record — Senate October 11, 2000 at p. 10192 and 10195.

<sup>56</sup> UNITED STATES COMMISSION ON CIVIL RIGHTS, RACIAL AND ETHNIC TENSIONS IN AMERICAN COMMUNITIES: POVERTY, INEQUALITY AND DISCRIMINATION, VOLUME 1: THE MOUNT PLEASANT REPORT 75 (1993).

<sup>57</sup> Id.



Without access to information about U.S. justice and social service system interventions that can offer her protection and can hold her abuser accountable for his crimes, the abuser's immigration related abuse can be very effective in keeping immigrant victims from seeking help, including calling the police.<sup>28</sup>

### 3. Effect of Protection Orders

Of the battered immigrants in the survey who called the police for help, 37% had already obtained a protection order. This is encouraging as it may show that once battered immigrants have begun to take steps to protect themselves they are willing to take additional steps to help ensure protection for themselves and their children. This finding provides another reason why battered immigrants should be encouraged by advocates, attorneys and justice system personnel to obtain protection orders in domestic violence cases. It also underscores how important it is that protection orders and family courts are open to all persons who are victims of domestic violence crimes committed in a state and/or who reside in a state without regard to the protection order applicant's immigration status.<sup>29</sup>

#### B. Police Response to Calls from Immigrant Victims

##### Police Did Not Treat Calls For Help From Battered Immigrants Seriously or Appropriately

Latina victims of domestic violence reported that police responding to calls for help generally

<sup>28</sup> For numerous case history examples of how abusers use threats of deportation to silence victims that were submitted to Congress in conjunction with the Violence Against Women Act's of 1994 and 2000, see generally, Leslye Orloff, Jessica Cundari, Erica Esterbrook, New Dangers for Battered Immigrants: The Untold Effects of the Demise of 245(i) (Ayuda, Washington, D.C. 1999); Robin L. Camp, Deecana Jang, Debbie Lee, Bill Tamayo, Leni Marin and Leslye Orloff, Untold Stories: Cases Documenting Abuse by U.S. Citizens and Lawful Residents on Immigrant Spouses. (Family Violence Prevention Fund, San Francisco, November 1993).

<sup>29</sup> Hanano v. Alassar, 2001 Va. Cir. LEXIS 169, at \* 10 (Va. Cir. Ct. 2001). (The immigration status of a legal or undocumented immigrant does not preclude them from formulating the necessary intent to establish domicile or residency for purposes of divorce actions); See generally, Howard A. Davidson, PART VII SPECIAL GROUPS: IMMIGRANT WOMEN AND CHILDREN, The Impact of Domestic Violence on children: A Report to the President of the American Bar Association. American Bar Association Center on Children and the Law, October 1994, at 19.

did not intervene effectively and did not follow either pro-arrest or mandatory arrest procedures that were in place at the time that the survey was conducted. Although the police responded within fifteen minutes to over half (54.4%) of the calls, the response time was in excess of an hour in 14% of the cases.<sup>117</sup> Survey participants were asked questions about incidences in which they had placed calls to the police for help during a domestic violence incident. Almost half (49.9%) of the battered immigrants who reported that they had called the police for help had called for help on more than one occasion. In response to the question about whom the police spoke to when they arrived on the scene, 31% of the immigrant victims who called for help reported that when the police arrived they spoke to others on the scene instead of the victim herself, and in 11% of the cases police spoke only to the abuser. This may be due in part to the fact that only 34% of officers communicated with the victims in Spanish.

These communication problems are even more troubling in light of the fact that the vast majority of battered immigrants who called the police (72.7%) reported making multiple calls for problems related to domestic violence. Of the battered immigrant women who called the police, 93.8% were experiencing severe physical abuse and were more likely to have experienced previous injuries. Immigrant women survey respondents also reported that they were experiencing abusive incidents at frequent intervals. Over half were abused at least once a week. In addition, among the battered immigrants who called the police, 98.1% experienced a history of criminal domestic violence offences.

This research also found that in addition to having a history of severe and frequent physical abuse (which often constituted criminal acts), 100% of the battered immigrant women who called the police were injured at the time of the call. A large proportion (59.6%) of the battered immigrants who called the police during a domestic violence incident reported that they had visible injuries

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<sup>117</sup> In the narrative response to the question about whether the battered immigrant felt that the police had responded appropriately to her call for help one battered immigrant reported that she had "called the police at 1:30 a.m. and they did not arrive until 7 a.m."

when police arrived. Of the women who called, 51.1% reported that other evidence of domestic violence was present on the crime scene including torn clothing, property in disarray or the police officer witnessed violence or threats. Disturbingly, 34.8% of these women reported that two or more additional types of evidence were present. When the police arrived at the scene of the domestic violence incidents reported by the women in this survey, 68.9% of the time at least one injury or other form of crime scene evidence was present.

Despite the prevalence of physical evidence, crime scene evidence and the history of the abuse (that with proper interviewing the police could have discovered), the arrest rate for abusers when police responded to calls from the battered immigrants in the survey was only 28.6%. Further, this arrest rate is even more troubling in light of the fact that 32.7% of the battered immigrants who reported domestic violence to the police already had protection orders in place.

Police interventions need to be improved so that all battered women and battered immigrant women get the response they need when calling the police for help during a domestic violence incident. When the police arrive as they did in the cases reported by women in the survey, see evidence of domestic violence including visible injuries and fail to make an arrest or fail to get a warrant for his arrest, their lack of action to punish the abuse sends a clear message to all involved. The abuser of the battered immigrant learns that he can continue to abuse and the police will not stop him and the victims learn that what the abuser has been telling her all along – that the police will not help her – is the truth, and they will be less likely to contact the police again.<sup>132</sup> On the other hand, when police see evidence of abuse and make arrest, victims feel “good because ...people have helped” them.

#### **IV. Policy Implications, Service Provisions and Training Needs**

Contrary to misperceptions, battered immigrant women are often willing to call the police for help to stop incidences of domestic violence perpetrated against them. Willingness to call the police is affected by immigration status, how long a battered immigrant has lived in the United

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<sup>132</sup> Orloff, *Supra* note at 36.

States, the number of support persons she has been talking to, whether or not the violence is beginning to affect her children, and whether she has obtained a protection order. There are many steps that can be taken by police departments to counteract the obstacles that immigrant battered women face in their ability to effectively use reporting to the police to curb, stop and/or try to escape the intimate violence in their lives. Advocates and attorneys working with battered immigrant women can play an important role supporting battered immigrant women's efforts to involve police in her case. They can also advocate for needed reforms in police practices, ideally as part of a coordinated community response to domestic violence that reflects the needs battered immigrant women.

#### **A. Utilizing legal resources that protect immigrant battered women**

##### **Violence Against Women Act (VAWA) Protections**

Until October of 2000, many battered immigrants who were in the United States on temporary visas had no real immigration protection from their abuser's power, control, abuse and retaliation. The Violence Against Women Act of 1994 (VAWA 94)

<sup>66</sup> offered access to legal immigration status for battered immigrants abused by their U.S. citizen or lawful permanent resident spouse or parent without the abuser's knowledge or control. The Violence Against Women Act of 2000 (VAWA 2000)<sup>67</sup> recognized that despite VAWA's 1994 protections, there were still many battered immigrants who were effectively cut off from many resources within the justice and social services systems that they and their children needed to be able to escape ongoing domestic violence.<sup>30</sup> As a remedy for the plight of battered immigrants

<sup>66</sup> Subtitle G, Protections for Battered Immigrant Women and Children, Violence Against Women Act in the Violence Crime Control and Law Enforcement act of 1994, Pub. Law 103-322, 106 STAT 1953-1955 (September 13, 1994).

<sup>67</sup> The Violence Against Women Act of 2000, Pub. Law 106-386 (October 28, 2000).

<sup>30</sup> Leslye E. Orloff and Janice Kaguyutan, Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses, Volume 10, Number 1, April 2002. *American University Journal of Gender, Social Policy and the Law*. While VAWA 1994 helped battered immigrants whose abusers were U.S. citizen or lawful permanent resident spouses or parents, battered immigrants who were not married to their abusers, whose abusers were undocumented or whose abusers had legal permission to live in the United States but who were not lawful permanent residents could not prior to VAWA 2000 access domestic violence related immigration relief. This last category included spouses and children of non-immigrant

not provided protection by VAWA 1994, Congress expanded VAWA protection to offer, for the first time, legal immigration options for battered immigrants without regard to the immigration status of their abusers and without regard to whether the abuser is a husband or parent.<sup>68</sup> VAWA 2000 created a non-immigrant crime victim visa ("U visa") for immigrant crime victims who can successfully demonstrate substantial physical or mental injury stemming from criminal activity.<sup>69</sup> The U visa is offered so long as the victim is, is likely to be or has been willing to be help in a criminal investigation or prosecution.<sup>70</sup> The victim must also obtain certification from a police officer, prosecutor, judge or other federal, state or local authority investigating or prosecuting the criminal activity<sup>71</sup> to be filed along with the victim's self-petition. After three years, a crime victim awarded a U visa can apply for lawful permanent residency if she can demonstrate that she needs to remain in the United States for humanitarian reasons, for family unity or because her presence is in the public interest.<sup>72</sup> With this new U-visa option, many more battered immigrants can receive protection and safely access police protection without suffering immigration consequences or risking deportation.

This research among battered immigrant women demonstrated that more than one fourth of women surveyed contacted the police for help with domestic violence at least once. This

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visa holders (e.g. students, diplomats, work visa recipients) who prior to VAWA 2000 retained the full legal right to control the immigration status of their spouses and children. These spouses and children could often only attain legal immigration status as a derivative of their sponsor spouse or parents immigration visa.

<sup>68</sup> Violence Against Women Act of 2000, Joint Managers Statement, Vol 146, No. 126 Congressional Record, 106<sup>th</sup> Congress Second Session, Wednesday October 11, 2000, S10192.

<sup>69</sup> "[T]he criminal activity referred to . . . is that involving one or more of the following or any similar activity in violation of Federal, State or local law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes" INA Section 101(a)(15)(U)(iii); 8 U.S.C. 1101 (a)(15)(U)(iii).

<sup>70</sup> H.R. 3244, 106th Cong. § 1513 (2000) (enacted) INA 101 (a)(15)(U) 8 U.S.C. 1101 (a)(15)(U).

<sup>71</sup> INA Section 101(a)(15)(U)(i)(III); 8 U.S.C. 1101 (a)(15)(U)(i)(III).

<sup>72</sup> H.R. 3244 106th Cong. § 1513 (f) (2000) (enacted) INA § 245 (l) 8 U.S.C. 1255 (l).

contact indicates that not only that battered women's advocates, legal services and pro bono attorneys and immigration rights groups, but also police and other justice system personnel who do in fact interact with battered immigrants need to learn about U visa protections. Each must play an active role in identifying those immigrants who qualify for U visa and VAWA protection and providing immigrant crime victims with information about options through which they can attain legal immigration status. The police and those they work with, including prosecutors, court house staff and judges, must be encouraged not only to identify victims who may qualify for VAWA or the U visa, but further provide U visa applicants with the certification they need from a government official so that immigrant crime victims can file for the U visa protections Congress created for them. Such actions benefit both victims and society. They simultaneously enhance protection for the victim and her children and at the same time strengthen the ability of police, prosecutors, courts and the state to hold abuser of immigrant victims accountable for their criminal actions.

**B. Developing Policies and Outreach Strategies That Build Upon Factors That Encourage Battered Immigrant Women to Call the Police For Help**

**a. Breaking the silence**

Isolation is a major control tactic used by abusive partners with their victims. It includes such acts as prohibiting contact with family and friends, forbidding the abused woman to work or attend school, and isolating her from her friends and family members and may include using threatening or offensive behavior toward them. Through isolation, an abused woman is cut off from important sources of social and tangible support that are essential to her efforts to escape, avoid, or remain safe from abuse. Social support has been shown to be extremely important in battered women's efforts to gain assistance.

The battered immigrant women in this survey who reported calling the police for help in a domestic violence incident were all persons who had spoken to two or more people about the domestic violence prior to calling the police. Of all the women who had spoken to more than one person about the abuse, 31.9% called the police for help. None of the women who reported

never having spoken to anyone about the abuse called the police regarding domestic violence. Importantly, it appears that the act of talking to others about the abuse was vital. The type of response they received from the individuals with whom they spoke about the abuse, whether it was supportive or non-supportive, did not influence whether women who spoke to one or more persons about the abuse were willing to call the police for help.

A common stereotype exists that abused women who do not leave the relationship are not trying to extricate themselves from the violence in their lives. This misconception is particularly troubling since immigrant women in particular need to be able to access justice and social service system assistance in order to counter violence without regard to whether or not they wish to separate from their abusers. The culturally based barriers to leaving an abusive relationship reported by other researchers

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were found to be extremely high for the battered immigrant Latinas in this survey population.

Comparing battered immigrants, who at the time of the survey were still living with their abusers with those who were not, it was found that cultural norms and concerns about the role of the woman as wife and mother in Latino families, a woman's cultural and religious obligation to keep the family together, and concerns about not having value in the community as a single woman/mother were pervasive factors that kept battered immigrants from leaving their abusers. In a previous analysis of data of this research study, we found that Latinas still residing with their abusers reported higher rates of the following barriers: fear of losing children (48.2%), a need to keep the family together (41.2%), not wanting to separate children from their father (41.2%), the perception that a good wife/mother does not leave (18.8%), and religion (18.8%).<sup>98</sup> Concerns about how a single woman would be treated by the community were also ranked higher for battered women still with their abusers, including the fear of being alone, "no one would want

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<sup>97</sup> Rachel Rodriguez, *The Power of the Collective: Battered Immigrant Farmworker Women Creating Safe Spaces*, HEALTH CARE FOR WOMEN INTERNATIONAL 20, 417, 426 (1999).

<sup>98</sup> Dutton, *Supra* note 2, 276-279.

me" and gossip. The other culturally related barrier that was higher among those still with their abusers was the inability to speak English (25.9%).<sup>99</sup>

Despite these strong cultural disincentives to seeking help, the data showed that the vast majority of the battered immigrants surveyed reported talking to one or more persons about the abuse.<sup>100</sup> For many battered women the first step in the help-seeking process is talking to people about the abuse. Other methods by which women try to escape or avoid the abuse include calling the police, obtaining a protection order, going to shelters, speaking with clergy, obtaining a separation or divorce from the abuser, using children for protection, and complying with the batterers urges.<sup>101</sup>

Studies have suggested that the most common way for a woman to receive help is through a progression of these methods. Most women go from personal methods (talking with the abuser), to informal (talking with a friend), to formal strategies (going to a shelter, clergy or social services agency), to legal strategies.<sup>102</sup> If they meet success at each of these steps, they will be more confident about their chances and continue to take steps to end the violence. At the same time, unsuccessful attempts such as calling the police for help and receiving a response that does not take the violence seriously can undermine the battered woman's efforts to take control over her life and stop the violence.<sup>103</sup> This survey's findings about the connection between battered women's efforts to confide in others about the abuse and her willingness to call the police provides strong evidence that, contrary to prevailing stereotypes, battered immigrants do take steps to bring an end to domestic violence even when they have not chosen to separate from their abusers.

Since many women who are in violent relationships actively seek help either though

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 266.

<sup>101</sup> See, Mary Ann Dutton, EMPOWERING AND HEALING THE BATTERED WOMAN: A MODEL FOR ASSESSMENT AND INTERVENTION 41 (1992).

<sup>102</sup> *Id.*; See, Lee Bowker, *Marital Rape: A Distinct Syndrome?*, 64 SOCIAL CASEWORK: THE J. OF CONTEMP. SOCIAL WORK 347-52 (1983).

<sup>103</sup> See discussion, *infra*, regarding this survey's findings that police were handling calls for battered immigrants appropriately and not taking the domestic violence reported by immigrant victims seriously.



informal or formal methods, it is important that those persons they are most likely to talk to are educated about how to respond appropriately. The majority of battered immigrant women turn to a female friend or female relative when they are ready to speak to someone about the abuse they are experiencing.<sup>104</sup> Therefore, it is important to impart information about domestic violence, laws and social services available to victims to all females in immigrant communities.

This information needs to be adapted and translated for use in diverse immigrant populations. Battered women's programs, police, and courts considering translating domestic violence outreach materials for various immigrant populations should not merely hire translators to translate existing materials developed for English-speaking, U.S. born battered women. Rather, they should contract with community-based organizations that have experience serving battered immigrants from various immigrant groups and have the organization's experts adapt and interpret the outreach materials. This approach will ensure that the resulting outreach materials will be culturally competent and work most effectively in reaching the targeted groups of immigrant victims.<sup>105</sup> Outreach and educational campaigns geared toward immigrant women should be designed to reach both the victim and the women she turns to for help. When women who are turned to for support are informed, they are better able to effectively aid the victim in

<sup>104</sup> Dutton, *Supra* note 2, at 259: A study on the effectiveness of protection orders made similar findings with regard to battered women generally. NATIONAL INSTITUTE FOR JUSTICE, U.S. DEP'T OF JUSTICE, CIVIL PROTECTION ORDERS: VICTIMS' VIEWS ON EFFECTIVENESS 2 (1998).

<sup>105</sup> Not all community-based organizations working in immigrant communities will be competent to undertake this work. They must have a depth of experience working with domestic violence victims from that immigrant community so that they can adapt materials to address specific challenges that domestic violence victims from that cultural community face. To identify community based organizations with expertise and cultural competency working on domestic violence victims in particular immigrant communities seek a group that is a member of the National Network to End Violence Against Immigrant Women. To identify an appropriate organization contact one of the National Network's co-coordinating organizations: The Immigrant Women Program of NOW Legal Defense and Education Fund (202) 326-0040, [inw@nowdef.org](mailto:inw@nowdef.org), the Family Violence Prevention Fund (415) 252-8900 x16, [leni@endabuse.org](mailto:leni@endabuse.org), or The National Immigration Project of the National Lawyer's Guild [gail@nationalimmigrationproject.org](mailto:gail@nationalimmigrationproject.org). Additionally, the Immigrant Women Program of NOW Legal Defense and Education Fund has developed outreach materials providing an overview of legal rights for immigrant victims that organizations can use to adapt for their use in their own communities. These materials can be obtained by calling the number listed above.

understanding that the violence is not her fault and to help her take appropriate steps to increase the victim and her children's safety including escaping the abuse.<sup>106</sup> In order for police to best help the victims, they should employ female officers more often. Victims may be more likely to open up to a woman officer just as they are more willing to talk to female friends and family members.

Through community policing, officers can establish relationships with immigrants and thus increase the chance that the victim or someone in whom she has confided will attempt to get legal help. Community policing efforts need to be designed to specifically involve immigrant community members. Departments may need to have separate meetings with various immigrant communities to create an opportunity for community members to address issues important to them. However, community policing in immigrant communities will only be effective in addressing domestic violence issues if female members of the community become actively involved. Police will have difficulty reaching immigrant women if the community members attending community-policing activities are predominately male. To address the problem of how to reach female members of the immigrant community, police should collaborate with community-based organizations that work with immigrant women and victims of domestic violence.

Identifying and collaborating with community-based organizations serving battered immigrant women has other advantages for the police. Professionals in these organizations can work closely with police on individual cases by offering assistance with translation and offering a place that police can bring immigrant victims for culturally competent services. Through such collaborations, police can also receive specialized training about the various needs of immigrant domestic violence victims and of immigrants, and thus will be better prepared to handle calls for help from battered immigrant women. Police domestic violence units and programs that collaborate with victim advocacy programs should work with victim advocacy groups to ensure

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<sup>106</sup> Dutton, *supra* note 50, at 282.

that the services of these collaborations are accessible to immigrant victims. Ideally, bilingual, bicultural advocates should be hired and interpreters with training in domestic violence should be hired to assist with languages other than those spoken by police department personnel and victim advocates.

The police can also take a leadership role in identifying other professionals who need to learn about domestic violence and the dynamics of domestic violence in immigrant communities. In their outreach efforts, police can involve professionals who come in contact with immigrant women in their work. There are many professionals from whom battered immigrants seek services that never identify domestic violence victims or make information about domestic violence available to those who seek their professional services. These professionals along with the police should receive training on domestic violence and should become part of outreach efforts on the issue. The professional services that immigrant women seek mostly include: immigration lawyers, maternal and child health care providers, child care and reproductive health care providers, public benefits agencies from which they seek services for their children, emergency medical services, and English classes.<sup>107</sup>

Community based organizations and the police should work together to develop outreach campaigns designed to educate battered immigrants and their support persons and ensure that they can call the police without fear of being reported to the INS. These community education campaigns should also include the distribution of educational materials to crime victims by the police and community based organizations. These materials should be available in all relevant languages, describe VAWA immigration relief and U visa protections, and contain referrals to local agencies that can help immigrant victims. Additionally, police should be encouraged to bring immigrant crime victims to community-based agencies that can offer them culturally competent services.

**b. Training Officers Not to Inquire Into the Immigration Status of Crime Victims**

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<sup>107</sup> *Id.* at 286.

Police departments must undertake a variety of activities to increase the likelihood that battered immigrant victims of domestic violence will call the police for help. First and foremost, they should identify the significant language minority and immigrant populations within the community. Police should then develop collaborative working relationships with community-based organizations, grassroots women's groups and churches that serve the identified immigrant community.

The next step is to address immigrant victim's fears that police and other justice system officials will report them to the INS for deportation. Departments should train all officers to refrain from asking the immigration status of victims who call the police for help. Officers must be informed that there is no federal law that requires that state and local police inquire about the immigration status of crime victims or witnesses. The training should explain current immigration law requirements, clarify that no officer has an obligation to ask a crime victim questions about immigration status or report to INS persons who may be undocumented, and eliminate officer misunderstandings about reporting.

It is important to note that individual police and justice system personnel in some jurisdictions have misconstrued provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA)<sup>73</sup> and have used that incorrect reading of the law to justify an individual officer's voluntary choice to ask battered immigrants and other immigrant crime victims questions about their immigration status. There have been isolated incidents in which police, prosecutors and judges have reported victims to the INS.<sup>74</sup> If battered immigrants believe that police will report them to the INS when they call for police protection from their abusers,

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<sup>73</sup> Illegal Immigration Reform and Immigration Responsibility Act of 1996, pub. L. No. 104-208, 110 stat. 3009, 8 U.S.C. § 1101 et. Seq. (Supp. II, 1996) [hereinafter IIRAIRA].

<sup>74</sup> Leslye E. Orloff et al., *Ensuring that Battered Immigrants who Seek Help from the Justice System are not Reported to the INS*, in *SOMEWHERE TO TURN: MAKING DOMESTIC VIOLENCE SERVICES ACCESSIBLE TO BATTERED IMMIGRANT WOMEN: A "HOW TO" MANUAL FOR BATTERED WOMEN'S ADVOCATES AND SERVICES PROVIDERS*, 279 (Leslye E. Orloff and Rachel Little, eds., 1999).

women and children will continue to endure ongoing abuse rather than call for help and their abusers' crimes will go unpunished. Such a confusion and fear is bound to increase among immigrant women in light of the prevailing post-September 11th conditions of Homeland Security.

Much confusion about reporting stems from common misunderstandings about particular provisions of IIRAIRA that became law in 1996. IIRAIRA preserved and expanded protections for battered immigrants that had been included in VAWA 1994. However, IIRAIRA contained many revisions to the immigration law that were intended to be harmful to immigrants in general. One such provision was designed to outlaw sanctuary city ordinances under which local jurisdictions mandated that their employees not inquire into the immigration status of persons who came into contact with city government. Section 287(g)(10) of the Immigration and Nationality Act (INA) was amended by IIRAIRA to require that all jurisdictions allow any officer or state government worker who chooses to do so to communicate with INS regarding the immigration status of any individual.<sup>75</sup> This section also allows any state employee to choose to voluntarily cooperate with INS in identification, apprehension, detention and removal of any persons not lawfully present in the United States.<sup>76</sup>

Some police officers, prosecutors and judges have misinterpreted section 287(g) (10) of the INA to justify their decision to inquire about the immigration status of crime victims. Some go so far as to argue that inquiries into immigration status of crime victims are mandatory.<sup>77</sup> From the face of the statute, this is untrue. Local law enforcement does have not authority to enforce the civil provisions of immigration law.<sup>31</sup> There are some instances in which a local, state

<sup>75</sup> INA Section 287(g)(10)(A).

<sup>76</sup> INA Section 287(g)(10)(B).

<sup>77</sup> Orloff, *Supra* note 74, at 282.

<sup>31</sup> *Gonzales v. Peoria*, 722 F.2d 468, 476-477 (9th Cir. 1983). *But see* *U.S. v. Santana-Garcia*, 264 F.3d 1188, 1193-1194 (10th Cir. 2001), where the court held that state law enforcement officers have general authority to investigate and make arrests for violations of federal immigration law. However, the court did not consider the distinction between civil and criminal provisions of the INA and all of the authorities upon which it relied involved arrests for criminal immigration violations. *Santana-Garcia* should not be read as having decided state and local police have the authority to enforce civil provisions of immigration law because the court did not

or federal law enforcement officer would be required, under federal law, to ask questions about immigration status. Perpetrators arrested by law enforcement officers for drug-related offenses must be referred to the INS if the officer has reason to believe that the perpetrator may not be lawfully residing in the United States.<sup>78</sup> The Anti-Terrorism and Effective Death Penalty Act of 1996 provides state and local police, if authorized by state or local law, with limited authority to arrest non-citizens in the U.S. when the non-citizen is present illegally **and** has previously been convicted of a felony and was deported or left the U.S. after such a conviction.<sup>32</sup> The only other instance in which state officials can be required to seek information about the immigration status of persons they encounter and then report such information to the INS is if the state has a contract with the U.S. Attorney General to carry out immigration investigations.<sup>79</sup> As of the writing of this article, the only jurisdiction in which local law enforcement officers have been deputized to enforce the civil provisions of immigration law is Florida.<sup>33</sup>

No police officer or justice system official is required, as matter of law, to inquire into the immigration status of crime victims who turn to the system for help. When individual officers choose to inquire into the immigration status of crime victims, they are essentially deciding that volunteering to help the INS is more important to them than bringing criminals to justice. Officers who adopt this approach undermine community relations between the police department and immigrant communities and encourage the commission of crimes against immigrant victims. This approach can and has led to the deportation of battered immigrant victims who qualified for legal immigration status under VAWA, but who were deported without ever being informed of that right or being given an opportunity to prove their eligibility.

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adequately analyze that issue.

<sup>78</sup> INA Section 287(d).

<sup>32</sup> The police officer must obtain confirmation from INS of the status of such individual and may keep the individual in custody only as long as necessary for INS to take the person into federal custody for removal. AEDPA §439, 8 U.S.C. 1252(c) (1996).

<sup>79</sup> INA Section 287(g)(1)-(9).

<sup>33</sup> Even in Florida only 35 officers have been designated and have received the required training to be are legally empowered to act as INS officials. See Memorandum of Understanding between the State of Florida and the U.S. Attorney General signed July 2, 2002, pp.1 and 4.

The results of this survey underscore that police departments and other justice system officials must take active steps to counter perceptions that immigrant victims cannot safely turn to the police for help without risk of being reported to the INS. To counter these perceptions, police departments should train their officers not to inquire into the immigration status of crime victims.

<sup>34</sup> The training should explain in detail how voluntary reporting by individual officers undermines immigrant community trust in the police and will discourage immigrant crime victims from calling the police. Police departments should also meet with domestic violence service providers and groups providing legal and social services to the immigrant community to publicly explain that police officers have been trained not to ask questions about the immigration status of victims.

#### Conclusion

Survey results among Latina immigrant battered women provide important information for advocates, attorneys and law enforcement officials about battered immigrant women. Despite the fact that they must overcome significant challenges to do so, many battered immigrant women are willing to call the police for help to curb domestic violence. One of the most significant factors affecting their willingness to call a battered immigrant woman's own immigration status and her fear of deportation if she contacts law enforcement officials. Those who had stable immigration status called the police more often than those who did not. Yet, despite this finding, this group of Latina women regardless of their immigration status, still called the police less often than the general population of battered women.

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<sup>34</sup> At least one jurisdiction has gone one step further. Seattle, Washington has passed and ordinance which states as follows: "Notwithstanding Seattle Municipal Code Section 4.18.010, unless otherwise required by law or by court order, no Seattle City officer or employee shall inquire into the immigration status of any person, or engage in activities designed to ascertain immigration status of any person." There is an exception for cases in which the "officer has reasonable suspicion to believe : (1) has previously been deported from the United States; (2) is again present in the United States; and (3) is committing or has committed a felony criminal law violation." This in large part to enhance protection for battered immigrants and other immigrant crime victims. Seattle Municipal Code Section 4.18

In addition to the immigration status, the women's willingness to call the police was influenced by the type, level, and frequency of violence they experienced. Women who experienced more severe forms of abuse, who endured injuries and who experienced more frequent incidents of violence were more willing to call the police for help. If a battered immigrant woman's children witnessed the violence, she was significantly more likely to call the police for help. Finally, a key finding in the survey was that without regard to the severity of the violence, no battered immigrants reported called the police for help unless they had previously spoken to someone else about the domestic violence. The persons immigrant women chose to talk to about the abuse were almost always other women. This finding underscores the importance of communicating to women in immigrant communities that immigrant women can and should call the police for help when they or a friend of theirs has been a victim of domestic violence, sexual assault or trafficking. If immigrant women learn from police behavior in their communities that calling the police means that they will be reported to INS, it will have a chilling effect on immigrant victim calls for assistance and it will become virtually impossible to prosecute abusers, traffickers and sexual assault perpetrators if their victims are non-citizens.

These findings have clear public policy and training implications. It is extremely important law enforcement personnel to increase their knowledge about the avenues for legal immigration status currently open to battered immigrants and other immigrant crime victims, including VAWA self-petitioning, VAWA cancellation, the T visa for trafficking victims and the U visa for immigrant crime victims. Police officers should actively participate in providing information and referrals to immigrant victims and providing certifications and documentation that will assist immigrant victims in obtaining legal immigration status. These efforts will both enhance safety to victims and further law enforcement efforts to hold perpetrators of crimes against immigrant victims accountable.

Further, as a matter of public policy supported by this Congress, law enforcement officers should not be inquiring into the immigration status of crime victims who call the police for help.



Encouraging police to report crime victims to INS rather than encouraging police to arrest and prosecute abusers of immigrant victims will deter immigrant victims from calling the police for help out of fear of their own deportation and abusers and perpetrators will be free to continue their abuse and to endanger other members of the community at large.

September 16, 2003

Dear Member of Congress:

We, the undersigned, urge you to oppose the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act, H.R. 2671, introduced by Representative Charles Norwood (R-9th/GA). Despite its title and the rhetoric surrounding it, this bill would have dangerous consequences for public safety.

We agree that our criminal laws need to be enforced in order to make our streets and communities safe. State and local police are currently authorized to enforce criminal laws, regardless of the immigration status of the perpetrator of the crime. They are also authorized to notify federal immigration agents about foreign nationals who have committed crimes. This authority is fully consistent with the public safety role of police. However, the CLEAR Act would force police to investigate and enforce federal *civil* immigration laws—for example, staying past the expiration date of a temporary visa is a civil immigration law violation. Asking local police to enforce civil laws would actually have a detrimental effect on crime solving and prevention. Newcomers and native-born residents alike, who are victims or witnesses of crime, would be less likely to approach local law enforcement for fear of exposing themselves or their immigrant family members to deportation.

We have grave concerns about several provisions of this bill, and ask you to consider the following:

*State and local police are not equipped to enforce federal civil immigration laws.* Federal immigration agents undergo an intensive 17-week training course in immigration law before they begin duty. The immigration code is among the most complex bodies of law, even in comparison to the tax code. It is infeasible to adequately train 600,000 state and local police officers in immigration law enforcement. And at a time of severe budget crises, when local police departments are simultaneously laying off staff and responding to new homeland security mandates, tacking on such a wide body of federal laws to enforce would simply overwhelm these agencies.

*If newcomers and their families view local police as immigration agents, they will be discouraged from reporting crimes or serving as witnesses.* It was no surprise that the Department of Justice's similar effort last year (to give local police the authority to enforce civil immigration laws) was denounced by scores of local police departments. Police attribute plummeting crime rates over the last decade or so to the "community policing" philosophy, where local police work to gain the trust and confidence of the residents they are charged with protecting. Enactment of the CLEAR Act would undermine the efforts and successes of local police, as word that they are now immigration agents will spread like wildfire in newcomer communities. Immediately, more immigrants and U.S. citizens with immigrant family members would decline to come forward to report crimes, fires, and other hazards, simply because they know that their immigration status or that of their family members would come under new scrutiny. When immigrants and their family members are scared to report crimes and suspicious activity, crimes go unsolved and the safety of the entire community is compromised.

As organizations that work with immigrants on a regular basis, we can point to countless examples of the chilling effect this bill would have on crime reporting. For example, immigrant victims of domestic violence are often told by their batterers that if they report the abuse to authorities, they will be deported. This forces victims to decide between two nightmares: remaining with their abuser, or potentially facing separation from their children and leaving them at the mercy of the batterer. The decision to report abuse is already difficult enough. Fear of immigration consequences on the part of the victim should never be a factor. Sadly, though, this is often the case. In fact, we know of situations in which the victim's immigration status has indeed come under scrutiny, either by the local police investigating the situation or the judge adjudicating a protective order. When other domestic abuse victims see their friends and relatives in deportation proceedings because they sought help from authorities, the message is clear: do not report the crime or you will face even harsher consequences.

This problem is not limited to domestic violence cases. Other examples show how criminals are not apprehended when immigrants begin to fear contact with local police, and stop reporting crimes or information. A Pakistani immigrant from Brooklyn, NY was stabbed in the foyer of his building in January 2003.<sup>1</sup> To avoid having to make a police report (because he was undocumented and feared the consequences), he told paramedics that he had stabbed himself. In Manhattan, a Mexican teenager was raped, but was afraid to report it to police because of her own

<sup>1</sup>Margie McHugh, Executive Director of the New York Immigration Coalition, testimony before the Governmental Operations Committee and the Subcommittee on Immigration, New York City Council, May 5, 2003.

undocumented status.<sup>2</sup> And in Clearwater, FL, the murder of an immigrant mother and her child may go unsolved because residents with clues or information of interest to local police are afraid to come forward.<sup>3</sup> These are isolated examples of what would quickly become an epidemic, should the CLEAR Act pass.

*In addition to the public safety concerns posed by this bill, it practically ensures the likelihood of civil rights abuses and wrongful arrests.* There are nearly eleven million naturalized U.S. citizens, and more than twenty-five million native-born Americans of Latin American and Asian descent. Citizens are not required to carry proof of citizenship with them. Yet some police officers, vested with the authority proposed in the CLEAR Act, would inevitably stop and question people of certain ethnic backgrounds, who speak foreign languages, or who have accents-leading to violations of the rights of U.S. citizens and legal residents whose only offense is "appearing foreign." Anticipating this, the bill purports to grant immunity from civil lawsuits for officers who enforce immigration laws. Such immunity is contrary to efforts to eradicate racial profiling from U.S. law enforcement, and it will not stop inevitable costly and lengthy litigation. Finally, wrongful arrests are likely as the bill requires that the notoriously bad data maintained by the federal immigration service be dumped into the National Crime Information Center database. This presents an administrative nightmare for state and local police, and again wastes precious resources at a time they can ill afford it.

If passed, the CLEAR Act would make state and local law enforcement officers' jobs nearly impossible, and would bring us further from, not closer to, the goal we all share of making our communities safer. We urge you to oppose it.

Sincerely,

National Organizations

ACORN

American-Arab Anti-Discrimination Committee (ADC)

American Civil Liberties Union

American Immigration Lawyers Association

Amnesty International USA

Anti-Defamation League

Arab American Institute

Asian American Legal Defense and Education Fund

Catholic Legal Immigration Network, Inc. (CLINIC)

The Committee for Inter-American Human Rights

Episcopal Migration Ministries (EMM)

Family Violence Prevention Fund

Hebrew Immigrant Aid Society (HIAS)

Immigrant Legal Resource Center

Immigrant Women Program of NOW Legal Defense and Education Fund

Immigration and Refugee Services of America

Labor Council for Latin American Advancement (LCLAA)

Lawyers Committee for Human Rights

Leadership Conference on Civil Rights (LCCR)

Love Sees No Borders

Lutheran Immigration and Refugee Service

Mexican American Legal Defense and Educational Fund (MALDEF)

Muslim Public Affairs Council (MPAC)

National Asian Pacific American Legal Consortium

National Catholic Association of Diocesan Directors for Hispanic Ministry (NCADDHM)

National Coalition Against Domestic Violence

National Coalition for Asian Pacific American Community Development

National Coalition for Haitian Rights

National Council of La Raza

National Employment Law Project

National Immigration Forum

National Immigration Law Center

National Immigration Project of the National Lawyers Guild

National Korean American Service and Education Consortium

Network in Solidarity with the People of Guatemala (NISGUA)

People For the American Way

The Puerto Rican Legal Defense and Education Fund

<sup>2</sup> Ibid.

<sup>3</sup> Tampa Tribune, "Police Appeal For Clues In Slaying Of Mom, Son," Natasha Gregoire, July 22, 2003.

Service Employees International Union (SEIU), AFL-CIO, CLC  
 SHARE Foundation  
 Sikh Mediawatch and Resource Task Force (SMART)  
 Southeast Asia Resource Action Center (SEARAC)  
 Tahirih Justice Center  
 UNITE!  
 United Food and Commercial Workers International Union (UFCW)  
 United States Conference of Catholic Bishops  
  
 Regional, State, and Local Organizations  
 Alabama  
 Hispanic Interest Coalition of Alabama  
 Arizona  
 Addiction Services, P.C.  
 Border Action Network  
 Border Watch  
 Florence Immigrant and Refugee Rights Project  
 Tempe Hispanic Forum  
 California  
 ACLU of Southern California  
 American Arab Anti-Discrimination Committee, Los Angeles and Orange County  
 Chapter  
 Asian Law Alliance  
 Asian Pacific American Legal Center of Southern California  
 Asian Pacific Policy and Planning Council  
 Catholic Charities of the Diocese of Santa Rosa  
 Catholic Charities Refugee and Immigrant Services-San Diego  
 Catholic Charities of San Jose  
 Central American Resource Center (CARECEN)-Los Angeles  
 Coalition for Humane Immigrant Rights of Los Angeles  
 Darin M. Camarena Health Centers, Inc.  
 East Bay Asian Local Development Corporation  
 East San Jose Community Law Center  
 Korean Resource Center of Los Angeles (KRC)  
 Lawyers' Committee for Civil Rights-San Francisco Bay Area  
 Migration Policy and Resource Center/Occidental College, Los Angeles  
 Newark Police Department  
 Sexual Assault Crisis Agency (SACA)  
 South Asian Network  
 Colorado  
 9to5 Colorado  
 Boulder County Safehouse  
 Colorado Coalition Against Domestic Violence  
 Fuerza Latina  
 Los Companeros (San Juan Citizens Alliance)  
 Rights for All People/Derechos Para Todos  
 Connecticut  
 Catholic Charities Migration and Refugee Services-Hartford  
 District of Columbia  
 CARECEN-DC (Central American Resource Center)  
 Washington Lawyers' Committee for Civil Rights and Urban Affairs  
 Florida  
 Catholic Charities of Orlando, Inc.  
 Diocese of Orlando, Respect Life Office  
 The Farmworker Association of Florida, Inc.  
 Florida Immigrant Advocacy Center (FIAC)  
 Latino Leadership, Inc.  
 The Law Firm of M. Thomas Lobasz, P.A.  
 Office for Farmworker Ministry  
 Georgia  
 Immigration Services of Catholic Social Services-Atlanta  
 Hawaii  
 Catholic Charities Community and Immigrant Services  
 Na Loio - Immigrant Rights and Public Interest Legal Center  
 Illinois  
 Alivio Medical Center

Dominican Literacy Center  
 Heartland Alliance for Human Needs and Human Rights  
 Illinois Coalition for Immigrant and Refugee Rights (ICIRR)  
 The Immigration Project  
 Korean American Resource & Cultural Center (KRCC)  
 Latino Youth, Inc.  
 Peregrinos por la Dignidad  
 Iowa  
 Immigrant Rights Network of Iowa and Nebraska  
 Kansas  
 El Centro, Inc.  
 Louisiana  
 Catholic Charities Archdiocese of New Orleans  
 Migration and Refugee Services/Catholic Diocese of Lafayette  
 Office of Justice and Peace/Catholic Diocese of Lafayette  
 Maine  
 Immigrant Legal Advocacy Project  
 Maryland  
 Immigration Outreach Service Center (IOSC)  
 Migrant and Refugee Cultural Support, Inc. (MIRECS)  
 Massachusetts  
 Brazilian Immigrant Center  
 Brazilian Resources and Services Network  
 Brazilian Workers Center  
 Irish Immigration Center  
 Massachusetts Immigrant and Refugee Advocacy (MIRA) Coalition  
 Massachusetts Law Reform Institute  
 UFCW Local 1445  
 Michigan  
 ACCESS (The Arab Community Center for Economic and Social Services)  
 Hispanic American Council  
 Michigan Organizing Project (MOP)  
 Minnesota  
 Archdiocese of St. Paul & Minneapolis Hispanic Ministry Leadership Team  
 C.N. Realty  
 Minnesota Literacy Council  
 Waseca Area Neighborhood Service Centre  
 Mississippi  
 Catholic Charities of the Diocese of Jackson  
 Catholic Diocese of Jackson  
 Daughters of Charity  
 Dominican Sisters  
 Saint Anne Catholic Church  
 Nebraska  
 NE Mexican American Commission  
 Nebraska Appleseed Center for Law in the Public Interest  
 New Jersey  
 Catholic Community Services, Refugee Resettlement and Immigration Assistance  
 Programs-Newark  
 Migration and Refugee Services/Diocese of Trenton  
 New Jersey Coalition for Battered Women  
 New Jersey Immigration Policy Network, Inc.  
 Wind of the Spirit, Immigrant Resource Center  
 New Mexico  
 MANA de Albuquerque (Mexican American National Association of Women)  
 New York  
 Alianza Dominicana, Inc.  
 Asian Americans For Equality, Inc.  
 CUNY School of Law, Immigrant Initiatives  
 Cabrini Immigrant Services  
 Catholic Charities of Rockville Centre  
 Central American Legal Assistance  
 Central American Refugee Center  
 Centro Salvadoreno  
 Community Board 2 Manhattan

Face to Face  
 The Forest Hills Community House  
 Goddard Riverside Community Center  
 Hotel Employees & Restaurant Employees Union, Local 100  
 Latin American Integration Center  
 Marymount Manhattan College Institute for Immigrant Concerns  
 New Immigrant Community Empowerment (NICE) - Jackson Heights  
 New York Immigration Coalition  
 New York State Defenders Association  
 Rockland Immigration Coalition  
 Safe Horizon  
 Young Korean American Service & Education Center (YKASEC)  
 North Carolina  
 Center for New North Carolinians  
 Episcopal Farmworker Ministry  
 FaithAction  
 Latino Community Credit Union  
 Latino Community Development Center  
 North Carolina Justice and Community Development Center  
 Ohio  
 Community Refugee & Immigration Services  
 En Camino, Migrant and Immigrant Outreach/Diocese of Toledo  
 Oklahoma  
 Asian American Community Service Association, Inc.  
 Leblang, Sobel & Ashbaugh, P.L.L.P.  
 Rhode Island  
 International Institute of Rhode Island, Inc.  
 Tennessee  
 Garcia Labor Company, Inc.  
 Highlander Research and Education Center  
 Iraqi House  
 Tennessee Immigrant and Refugee Rights Coalition (TIRRC)  
 Texas  
 ARCA (Association for Residency and Citizenship of America)  
 Association for Immigrants' Equality and Freedom  
 BARCA, Inc.  
 Catholic Charities of Dallas, Immigration Counseling Services  
 Catholic Family Service, Inc.  
 Concilio de Inmigración  
 Equal Justice Center  
 Hines & Leigh, P.C.  
 School for All  
 Texas Civil Rights Project  
 Texas Council on Family Violence  
 Virginia  
 The Hispanic Committee of Virginia  
 Office of Justice and Peace, Catholic Diocese of Richmond  
 Refugee and Immigration Services, Catholic Diocese of Richmond  
 Refugee & Immigration Services - Roanoke Office  
 Tenants' & Workers' Support Committee  
 Virginia Hispanic Chamber of Commerce  
 Virginia Justice Center for Farm and Immigrant Workers  
 Washington  
 Chinese Cultural Association  
 El Centro de la Raza  
 Northwest Immigrant Rights Project  
 Washington Defender Association's Immigration Project  
 Wisconsin  
 La Causa, Inc.  
 Voces de la Frontera

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## A PHONY 'FREEDOM RIDE', By KRIS W. KOBACH

October 1, 2003—THE "Immigrant Workers Freedom Ride" descends on Washington today in what participants claim is a civil-rights protest like the original Freedom Ride of 1961. They insist that illegal aliens in America today face "injustices" akin to those faced by African-Americans in the segregation era. Not only is their analogy absurd, their proposals are ill-conceived.

The analogy is an affront to those who suffered true injustice prior to the passage of civil rights laws in the 1960s. Illegal immigrants are not law-abiding citizens whose constitutional rights are under siege due to racial animus. Rather, they are foreign nationals who have violated our laws - laws that apply to all non-citizens, regardless of race.

And what they're demanding are not rights at all, but the privilege of being above the rule of law.

Their top demand is for an amnesty to legalize most of the more than 8 million illegal aliens already in the United States.

That would make a mockery of our immigration laws - sending the message that they're mere guidelines, not to be taken seriously because Congress is likely to waive them at any time. Worse, it would reward those who have broken the law - while double-crossing the more than 4 million aliens who are respecting it by waiting patiently to enter the United States legally.

Moreover, an amnesty for illegal aliens is not just a pardon for past offenses - it also gives legal status for the future. This is like telling a bank robber that he's not just getting immunity from prosecution, but he can also keep the money he stole.

Finally, amnesties don't solve the problem of illegal immigration. They make it worse: Every amnesty of the past two decades has engendered another surge of illegal immigration. Aliens flooded across the border - some expecting that another amnesty would soon follow, others intent on falsely claiming that they were eligible for the latest amnesty. (After the 1986 amnesty, the INS identified a whopping 398,000 cases of fraud.)

Past amnesties have also aided terrorists. Mahmud Abouhalima, a leader of the 1993 World Trade Center bombing, was legalized under the 1986 amnesty (via a provision for seasonal agricultural workers, though he was a New York cabdriver). This let him travel abroad and return to America, including trips to Pakistan and Afghanistan for terrorist training.

The activists also demand that the delays for immigration benefits be shortened. No question: These are too long. Despite improvements since President Bush took office, an application to reunite a husband and wife still averages nearly two years to process. Reuniting parents with children takes more than three years.

But this points to a problem with their first demand: Amnesty for millions of illegals would increase the delays for those who obey the law.

All amnesties require case-by-case interviews and documentation to review each applicant's eligibility. Short of an unlikely infusion of tens of billions of dollars into the process, and the hiring of thousands of new federal immigration officers (which would take years), a massive new amnesty would vastly increase delays across the board.

The third item on the activists' shopping list is driver's licenses for illegal aliens - a problem for law enforcement and national security.

The driver's license is the basic identity document in American society. Present one, and no further questions are asked. On our northern border, it's an effective substitute for a U.S. passport.

Making licenses available to illegal aliens entails a huge loss of security. States that let illegals acquire driver's licenses must necessarily reduce the level of documentation they require (something recently proposed in the New York state Assembly). Those lax standards make it easier for criminals to create false identities backed up by the imprimatur of a driver's license.

Worse, the driver's license becomes a useful tool for terrorists. Virginia issued licenses to eight of the 9/11 terrorists - which they likely used to board the airplanes on that fateful day. Since it is plainly a matter of national security in the post-9/11 era, Congress should consider stripping highway funds from states that do grant drivers' licenses to illegals.

The 9/11 killers exploited numerous weakness in the enforcement of our immigration laws. We have since corrected many of those vulnerabilities, but others remain. And the "Freedom Ride" activists' agenda would undo many of the gains.

Legal, orderly immigration is a positive force that has invigorated our country, our culture, and our economy for centuries. But there is no justification for *illegal*

immigration. For an even greater force lies at the core of America's heritage and success - the rule of law.

*Kris W. Kobach, a law professor at the University of Missouri-Kansas City, served as counsel to Attorney General John Ashcroft in 2001-2003. He is now running for the U.S. Congress in the 3rd District of Kansas.*

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STATE CAPITOL  
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SACRAMENTO, CA 95834-0069

## California Legislature

September 12, 2003

Dear Members of Congress:

We, the undersigned Members of the California Legislature, urge you to oppose the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act, H.R. 2671, introduced by Representative Charles Norwood (R-9th/GA). Despite its title and the rhetoric surrounding it, this bill poses dangerous consequences for public safety, improperly shifts the burden of federal immigration law enforcement to local police, and ensures the likelihood of civil rights abuses and wrongful arrests.

The CLEAR Act would require state and local police to enforce civil immigration laws, or lose federal funds earmarked to reimburse them for detaining criminal lawbreakers. This bill would also expand the scope of the National Crime Information Center database, which is accessed in routine situations by police to identify wanted criminals, to include individuals solely based upon their immigration status.

Currently, local law enforcement authorities already provide sufficient cooperation and assistance to federal authorities on immigration matters in the context of persons in custody for violations of state and local laws. This bill, however, would require police to arrest and detain persons based upon suspected or alleged violations of civil immigration laws, thereby diverting state and local law enforcement agencies from enforcing state criminal laws.


State and local police in California have worked hard to gain the trust and confidence of the diverse communities they serve. By turning police into immigration agents, the CLEAR Act would undermine these efforts significantly by discouraging immigrants from coming forward to report crimes and suspicious activity and making our streets less safe as a result. The California Police Chiefs Association in an April 10, 2002, letter to the United States Department of Justice stated, "It is the strong opinion of the California Police Chiefs Association leadership that in order for local and state law enforcement organizations to continue to be effective partners with their communities, it is imperative that they not be placed in the role of detaining and arresting individuals based solely on a change in their immigration status."

If passed, the CLEAR Act would make state and local law enforcement officers' job nearly impossible and move us further from the goal we all share of making our communities safer. We urge you to oppose this bill.

Sincerely,

  
ASSEMBLYMEMBER DIAZ  
13<sup>TH</sup> ASSEMBLY DISTRICT

  
ASSEMBLYMEMBER VER  
12<sup>TH</sup> ASSEMBLY DISTRICT

  
SENATOR DUCHERRY  
40<sup>TH</sup> SENATE DISTRICT



H.R. 2671, CLEAR Act letter

<del>John A. DeLoach</del>	John Longville
Sarah Keys	Cindy Montemayor
Robert Allen	John L. Speer
Wesley	William
Alan Lowenthal	John Lind
John Goldberg	<del>Paul</del>
Julian D. King	Judy Chen
Barbara S. Matthews	Rudy Bermudez
<del>James</del>	

H.R. 2671, CLEAR Act letter

John UpJim SalisElaine Negrete MendiEd O'QuinnGene SullivanPatricia WhiggamPaul Kelley-HornJuan VargasChristina KehoeSally JohnyJohn C. CrayJoe NestorAnnabel K. JacksonFinian ParleyAllysonGeorge NelsonLin DuncanJames E. HardMark P. JohnsonMark S.

H.R. 2671, CLEAR Act letter

<del>Neil</del>	Donagata
Deirdre Kuehl	Deirdre Kuehl
Clara Roney	James Roney
Wesley Clark	Gilbert Clark
Edward Roney	Tom Tomlinson
<del>James Roney</del>	Bryan Roney
John Roney	John Roney
Rick Alpert	Betty Karmel
Deborah Clark	

H.R. 2671, CLEAR Act Letter  
California State Legislators Signatures

Assemblymember Manny Diaz   Assemblymember Leland Yee   Senator Denise Moreno  
Ducheny  
23<sup>rd</sup> Assembly District   12<sup>th</sup> Assembly District   40<sup>th</sup> Senate District

John A. Dutra  
20<sup>th</sup> Assembly District

John Longville  
62<sup>nd</sup> Assembly District

Sarah Reyes  
31<sup>st</sup> Assembly District

Cindy Montanez  
39<sup>th</sup> Assembly District

Rebecca Cohn  
24<sup>th</sup> Assembly District

Mervyn M. Dymally  
52<sup>nd</sup> Assembly District

Carol Liu  
44<sup>th</sup> Assembly District

Wilma Chan  
16<sup>th</sup> Assembly District

Alan Lowenthal  
54<sup>th</sup> Assembly District

John Laird  
27<sup>th</sup> Assembly District

Jackie Goldberg  
45<sup>th</sup> Assembly District

Ronald Calderon  
58<sup>th</sup> Assembly District

Fabian Nunez  
46<sup>th</sup> Assembly District

Judy Chu  
49<sup>th</sup> Assembly District

Barbara S. Matthews  
17<sup>th</sup> Assembly District

Rudy Bermudez  
56<sup>th</sup> Assembly District

Dario Frommer  
43<sup>rd</sup> Assembly District

H.R. 2671, CLEAR Act Letter  
California State Legislators Signatures

Lois Wolk  
8<sup>th</sup> Assembly District

Simon Salinas  
28<sup>th</sup> Assembly District

Gloria Negrete McCloud  
61<sup>st</sup> Assembly District

Ed Chavez  
57<sup>th</sup> Assembly District

Gene Mullin  
19<sup>th</sup> Assembly District

Patricia Wiggins  
7<sup>th</sup> Assembly District

Mark Ridley-Thomas  
48<sup>th</sup> Assembly District

Juan Vargas  
79<sup>th</sup> Assembly District

Christine Kehoe  
76<sup>th</sup> Assembly District

Sally J. Lieber  
22<sup>nd</sup> Assembly District

Ellen Corbett  
18<sup>th</sup> Assembly District

Joe Nation  
6<sup>th</sup> Assembly District

Hannah-Beth Jackson  
35<sup>th</sup> Assembly District

Fran Pavley  
41<sup>st</sup> Assembly District

Lloyd Levine  
40<sup>th</sup> Assembly District

George Nakano  
53<sup>rd</sup> Assembly District

Loni Hancock  
14<sup>th</sup> Assembly District

Jerome E. Horton  
51<sup>st</sup> Assembly District

Herb J. Wesson Jr.  
47<sup>th</sup> Speaker, Assembly District

Mark Leno  
13<sup>th</sup> Assembly District

H.R. 2671, CLEAR Act Letter  
California State Legislators Signatures

Nell Soto  
32<sup>nd</sup> Senate District

Sheila Kuehl  
23<sup>rd</sup> Senate District

Gloria Romero  
24<sup>th</sup> Senate District

Wesly Chesbro  
2<sup>nd</sup> Senate District

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President pro Tem, 3<sup>rd</sup> Senate District

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39<sup>th</sup> Senate District

Deborah Ortiz  
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Don Perata  
9<sup>th</sup> Senate District

Richard Alarcon  
20<sup>th</sup> Senate District

Joseph L. Dunn  
34<sup>th</sup> Senate District

Gilbert Cedillo  
22<sup>nd</sup> Senate District

Tom Torlakson  
7<sup>th</sup> Senate District

Byron Sher  
11<sup>th</sup> Senate District

Jack Scott  
21<sup>st</sup> Senate District

Betty Karnette  
27<sup>th</sup> Senate District

WRITTEN TESTIMONY OF GROVER NORQUIST, PRESIDENT OF AMERICAN FOR TAX REFORM.

Chairman Hostettler and other members of this committee, thank you for the opportunity to address you regarding H.R. 2671, the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act.

My name is Grover Norquist and I am president Americans For Tax Reform (ATR), a non-partisan, not-for-profit non-partisan coalition of taxpayers and taxpayer groups who oppose all federal and state tax increases. I submit my comments to you today in strong opposition to forcing state and local law enforcement to enforce federal immigration laws.

In April 2002, the Justice Department attempted to force state and local police into enforcing civil immigration laws. This proposal was met by a firestorm of opposition from state and local law enforcement, elected officials, and other organizations over fears that if the policy became law, it will set a dangerous precedent with regard to the authority of state and local law enforcement agencies to enforce civil violations of many federal laws. Fortunately, the Department of Justice listened to the expressed concerns and backed off of their original proposal.

Despite the Justice Department's decision not to implement this policy, Representative Charles Norwood (R-GA) introduced the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act (H.R. 2671) in the House on July 9, 2003. The legislation forces state and local law enforcement personnel to enforce federal immigration laws. Furthermore, it starts the United States on a path towards establishing a National Police Force.

I will outline the taxpayer's concerns with this proposal, and explain our opposition to the expansion of federal law enforcement duties to state and local police forces.

H.R. 2671 legislates the legal authority of police to enforce federal civil immigration laws (currently state and local police may only enforce criminal immigration laws, except in very specific circumstances), and requires them to either do so or lose certain federal funds. The bill further encourages police participation by awarding them assets seized from undocumented immigrants, permitting them to seek funds from the federal government for failure to pick up undocumented immigrants, and granting them limited immunity from lawsuits.

The bill also mandates the entry of civil immigration information into the National Crime Information Center (NCIC) database (a database of wanted persons maintained by the FBI for local law enforcement use). By inputting potentially millions of names of people with civil immigration law violations in the NCIC, this bill proposes a sweeping expansion of the scope of NCIC, and severely undermines its manageability.

I will now explain several of the concerns that myself and members of the Center-Right Coalition have with the CLEAR Act and the implications passage and enactment of the law will have on local law enforcement. In addition, I would like to submit a letter signed by myself, Former Member of Congress Bob Barr, and David Keene, President of the American Conservative Union.

Expansion of Federal Immigration Responsibilities Harms Local Law Enforcement's Efforts to Enhance National Security

National security experts and state and local law enforcement agree that good intelligence and strong relationships are the keys to keeping our nation and streets safe. Mechanisms already exist in current law to foster cooperation between local law enforcement and federal agents when these types of partnerships are required.

For example, in 1996, Congress amended the Immigration and Nationality Act to provide an appropriate forum for state and federal cooperation in the enforcement of federal immigration laws. Congress authorized the Attorney General to enter into a written agreement with a state or local government under which local law enforcement officers could perform the functions of an immigration officer. These agreements would require that the local police officers receive appropriate training in federal immigration law, and that they perform these functions under the supervision of the Attorney General. Operating under this statute, the Attorney General can work with local authorities under conditions that ensure proper training and that preserve the exclusive authority of the federal government over immigration matters.

NEW JOB DUTIES INCREASE THE BURDEN ON STATE AND LOCAL LAW ENFORCEMENT

The number one priority of local police is ensuring public safety. Crime solving and prevention should not take a back seat to immigration law enforcement or any

other federal mandate. Adding immigration law enforcement to the job duties of local law enforcement diverts much-needed resources, and is at cross-purposes with their main goal: ensuring the safety and security of the communities they have pledged to serve.

Because of the complexity and nuances involved, immigration law enforcement is an expensive proposition. It requires extensive training of agents unfamiliar with federal immigration law.

The responsibilities of state and local police have increased immensely after the September 11th terrorist attacks, and they simply do not have extra time on their hands to take on what is rightly a federal duty. Federal immigration law is even more complex than the U.S. tax code, and enforcement of such should remain with the federal agents trained in these matters. Forcing state and local law enforcement agencies to enforce federal immigration laws will make police's primary job-investigating, solving, and preventing real crimes-even harder.

#### UNDERMINES STATE AND LOCAL GOVERNMENTS

Expanding the responsibilities of federal immigration officers onto state and local police forces runs roughshod over state and local governments. The federal government uses threats of decreased or eliminated federal funding in order to force local governments into participating in this program. Many state and local government bodies have passed laws and city council ordinances, preventing the deputization of local police as immigration agents.

Since September 11th, resolutions and laws prohibiting civil immigration law enforcement by state and local police have passed in over twenty localities. These local governments understand that, even with the challenges of waging an international war on terrorism, turning police into immigration agents is not the solution to fixing our current immigration problem.

#### FORCING IMMIGRATION LAW ENFORCEMENT DUTIES ONTO STATE AND LOCAL POLICE IS UNNEEDED AND UNNECESSARY LAW-MAKING

As I mentioned earlier, mechanisms already exist within current law to foster cooperation between local law enforcement and federal immigration agents. Several states and localities have entered into memorandums of understanding (MOUs) with the federal government, to confer civil immigration law enforcement powers on their local officers. These MOUs encourage important safeguards, including the training of local agents in immigration law. An MOU is currently in place in Florida, and others are being negotiated around the country. Congress should not override these safeguards by allowing any local police officer in the nation to enforce civil immigration laws, with no training or safeguards in place.

It is important to note that local police already have the right and duty to enforce criminal law-this includes criminal immigration law violations and other crimes committed by foreign nationals. Legislation is simply not needed in order to confer these powers upon state and local law enforcement. State and local police are also currently authorized to notify federal immigration agents about arrests of foreign nationals for crimes they have (or are suspected of having) committed. This ability is fully consistent with the public safety role of police.

#### CONCLUSION

It is unrealistic to ask local police to take on the variety of specialized law enforcement functions currently the responsibility of the federal government. The legislation that has been introduced places an unmanageable burden on local law enforcement by forcing state and local governments to pay their police forces to do the jobs of federal law enforcement agencies, raising questions, by the way, of the federal Anti-Deficiency Act.

In order to ensure that state and local law enforcement agencies comply the federal government uses financial incentives and penalties to force them to take on the responsibilities of federal immigration personnel. In fact, the legislation introduced in the House of Representatives will discontinue federal funding to states and localities if they do not implement statutes explicitly authorizing their law enforcement to enforce immigration laws within two years after the bill's enactment.

Passage of this legislation will represent a dramatic shift that is likely to damage local law enforcement, while raising troubling new questions about the intersection of local law enforcement and federal law.

I along with members of the Center-Right Coalition support the efforts of Congress and this Administration to fight terrorism at home and abroad. However, Congress should not implement sweeping and unnecessary policy changes that place us



on the path towards creating a Federal Police Force, and which clearly violate principles of federalism on which our Republic was founded and would cost taxpayers large sums of money to implement or will the program will become an unfunded mandate.

Thank you for the opportunity to submit my testimony.

---

September 22, 2003

The Honorable George W. Bush  
President, United States of America  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20500

Dear Mr. President:

We are writing to express our concern over the July 9, 2003 introduction of H.R. 2671, the Clear Law Enforcement for Criminal Alien Removal Act, or CLEAR Act of 2003. The legislation forces state and local law enforcement personnel to enforce federal immigration laws. It starts the United States on a path towards establishing a National Police Force.

In the wake of the terrorist attacks on September 11th, 2001 and in the name of Homeland Security, some Members in Congress are attempting to force local law enforcement agencies to enforce federal immigration laws. To do this, however, these Members are taking the position that state and local law enforcement agencies have the power and perhaps even an obligation to seek out and to apprehend those who violate federal civil as well as criminal laws.

We are convinced that should the CLEAR Act become law, it will set a dangerous precedent with regard to the authority of state and local law enforcement agencies to enforce civil violations of many federal laws. If, as this bill requires, local police enforce our immigration laws, the next logical step is to require them to seek out and apprehend those who violate any and all federal laws. This would lead to the nationalization of local law enforcement.

This is not just bad policy, it is not really needed. Mechanisms already exist to foster federal-local law enforcement cooperation.

For example, in 1996, Congress amended the Immigration and Nationality Act to provide an appropriate forum for state and federal cooperation in the enforcement of federal immigration laws. Congress authorized the Attorney General to enter into a written agreement with a state or local, government under which local law enforcement officers could perform the functions of an immigration officer. These agreements would require that the local police officers receive appropriate training in federal immigration law, and that they perform these functions under the supervision of the Attorney General. Operating under this statute, the Attorney General can work with local authorities under conditions that ensure proper training and that preserve the exclusive authority of the federal government over immigration matters.

The CLEAR Act will also place an unmanageable burden on local law enforcement by forcing state and local governments to pay their police forces to do the jobs of federal law enforcement agencies, raising questions, by the way, of the federal Anti-Deficiency Act. Furthermore, in order to ensure that state and local law enforcement agencies comply with the CLEAR Act, the bill includes several financial incentives and penalties for failing to do so. In fact, the legislation will discontinue federal funding to states and localities if they do not implement statutes explicitly authorizing their law enforcement to enforce immigration laws within two years after the bill's enactment.

We believe that the CLEAR Act represents a dramatic shift which is likely to damage local law enforcement, while raising troubling new questions about the intersection of local law enforcement and federal law. We support the efforts of Congress and this Administration to fight terrorism at home and abroad. However, Congress should not implement sweeping and unnecessary policy changes that place us on the path towards creating a Federal Police Force, and which clearly violate principles of federalism on which our Republic was founded.

Sincerely,  
Grover Norquist  
President, Americans for Tax Reform  
David Keene  
President, American Conservative Union

The Honorable Bob Barr  
Former Member of Congress  
American Conservative Union Foundation

cc: The Honorable Charlie Norwood  
U.S. House of Representatives  
U.S. Senate



EDWARD NELSON  
CHAIRMAN

September 15, 2003

TO: Jennie Derge  
FR: Ron Pearson  
RE: Support of H.R. 2671

The legislation introduced by Representative Norwood (H.R. 2671) giving state and local law enforcement agencies the authority to detain illegal aliens and criminals within the course of their customary duty is something that we avidly support.

In fact, U.S. Border Control sent thousands of postcards all over the country urging people to come out in support of this legislation. They in turn sent postcards that we provided to their Representatives requesting them to cosponsor the bill. A copy of the postcards that were sent is attached to this memo.

Our action informed the people of the problem and what they could do about it. They realized that they could make a difference by informing their Representatives of their support for this legislation.

We're glad to see that so many Representatives cosponsored Congressman Norwood's bill. We hope that our efforts aided in this outcome, and we will continue our efforts to obtain more cosponsors for the bill.

If you have any questions or comments, please contact me at (202) 547-7177.  
Thank you.

## AMERICAN COUNCIL FOR IMMIGRATION REFORM

P. O. Box 2752  
Arlington, VA 22202

Phone: (703) 920-3965 Fax: (703) 920-4291  
E-Mail: [ancir@erols.com](mailto:ancir@erols.com)

Dan James Founder

Joan Hueter President

Joe Borda Vice President

Linda Purdue Secretary

Wendy Graham Treasurer

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William Buchanan Legislation

ADVISORY BOARD

Barbara Coe

California Coalition for

Immigration Reform

Michael Crowe

Virginia Coalition for

Immigration Reform

Joseph Daleiden

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Frederic G. Dupuy

Texas for Fair

Immigration

James R. Edwards, Jr. PhD

David A. Gorak

Midwest Coalition to

Reduce Immigration

Diana Hull PhD

Bill King, Chief Border

Patrol Agent (Ret.)

Robert Kyser

The Social Contract Press

Jonathon Moseley JD

Margaret Orchowski PhD

Jesse Lee Peterson

Brotherhood Organization

of a New Destiny

Emilio-Adolfo Rivero JD

Popular Republican Party

of Cuba

Franz Schauer PhD

Tom Tancredo (R-CO)

Chairman, Congressional

Immigration Caucus

Kenneth R. Timmermann

Author and Investigative

Reporter

June 25, 2003

The Honorable Charles Norwood  
House of Representatives  
Washington, DC 20515

Dear Mr. Norwood:

I am most grateful that you are about to introduce comprehensive immigration reform legislation. There is a disconnect between federal, state, and local efforts to curb illegal immigration. Your bill, The Homeland Security Enhancement Act of 2003, jointly introduced with Sen. Jeff Sessions, will remedy much of this problem.

I am pleased that this bill:

- Affirms the right of states and local governments to catch and detain illegal aliens and ultimately offers financial incentives for doing so.

- Confirms what we always knew, that illegal aliens are criminals — all of whom can be subjected to civil and/or criminal penalties and have their assets forfeited.

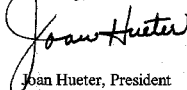
- Provides for half of funds obtained through civil penalties and forfeitures to go to the state or local agency that apprehends an illegal alien and compensates state and local agencies for detention costs associated with holding illegal aliens after capture.

- Mandates free exchange of illegal alien enforcement information between federal, state, and local authorities.

- Provides that manuals be developed and funds be appropriated for training state and local officials to identify, arrest, detain, and remove illegal aliens.

I can assure you that you have the support of our organization in this effort and that we will assist you in any way we can.

Sincerely,

  
Joan Hueter, President



## NATIONAL SHERIFFS' ASSOCIATION

1450 DUKE STREET • ALEXANDRIA, VIRGINIA 22314-3490  
Telephone (703) 836-7827 • Fax (703) 683-6541  
nsa@mail@sheriffs.org • www.sheriffs.org

July 7, 2003

**Sheriff Tommy Ferrell**  
NSA President  
Natchez, Mississippi

**Thomas N. Faust**  
Executive Director  
Alexandria, Virginia

The Honorable Charlie Norwood  
United States House of Representatives  
2452 Rayburn House Office Building  
Washington, DC 20515

Dear Representative Norwood:

I am writing on behalf of the 22,000 members of the National Sheriffs' Association (NSA) to support your legislation to increase the funding authorization for the State Criminal Alien Assistance Program (SCAAP). Sheriffs across the nation rely upon this vital program.

Like you, we are concerned that the SCAAP program has been historically under funded. That is why we welcome your legislation to increase the authorized amount to \$1 billion annually. As you know, sheriffs rely upon SCAAP funds to reimburse part of the costs of keeping criminal aliens in county jail. However, the program funding has not kept pace with the actual expenses of housing criminal aliens in jail. This gap in funding has left local law enforcement with an incredible financial burden.

Furthermore, NSA supports provisions in your bill to affirm the ability of state and local law enforcement to investigate, apprehend, detain or remove aliens in the United States in the enforcement of immigration law. Enforcement of immigration law is primarily a federal responsibility; however, in certain circumstances, federal law enforcement is unable to respond to a call for assistance placed by local law enforcement regarding an alleged immigration violation. In most cases, the alien is released because the jurisdiction of the local law enforcement official is questionable. Passage of this legislation will settle the question of jurisdiction by codifying and affirming local law enforcement's ability, when properly trained, to enforce immigration law. This will prevent the release of criminal aliens into society and keep communities safer.

Thank you for your hard work on this issue and we look forward to working with you to ensure that this measure becomes law.

Sincerely,

*Wayne V. Gay*  
Wayne V. Gay  
President

**Charles B. Meeks**  
Director Emeritus

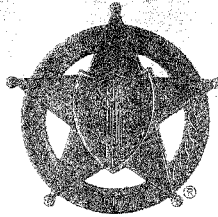
**Richard M. Weintraub**  
NSA General Counsel  
Washington, D.C.

**Sheriff Dwight E. Radcliff**  
NSA Corporate Representative  
Circleville, Ohio

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# NATIONAL SHERIFFS' ASSOCIATION



## Resolution

2003-3

### SUPPORT THE STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

- WHEREAS, the enforcement of the immigration laws is primarily a federal responsibility; and
- WHEREAS, criminal aliens are often held in county jails under the jurisdiction of the Office of Sheriff; and
- WHEREAS, the Department of Justice has advised that local law enforcement has the inherent ability to enforce immigration laws; and
- WHEREAS, the federal government has a financial responsibility regarding the housing of criminal aliens in county jails; and
- WHEREAS, the State Criminal Alien Assistance Program (SCAAP) was created by Congress to reimburse the costs of incarceration of criminal aliens; and
- WHEREAS, the SCAAP program has historically been under funded; now
- THEREFORE BE IT RESOLVED, that the National Sheriffs' Association supports funding SCAAP at a level appropriate to meet the actual needs; and
- BE IT FURTHER RESOLVED, that the National Sheriffs' Association supports the ability of sheriffs to enforce immigration laws in the absence of federal law enforcement.
- BE IT FURTHER RESOLVED, that the National Sheriffs' Association supports modifications to the SCAAP program to allow pre-trial and charged inmates to qualify under the program for reimbursement regardless of disposition and verdict of the trial.

Reported by the Legislative Affairs Committee  
 Reported by the Accreditation and Detentions Committee  
 Adopted by the National Sheriffs' Association  
 June 23, 2003



## SOUTHERN STATES POLICE BENEVOLENT ASSOCIATION, INC

1900 Brannan Road  
McDonough, GA 30253-4310  
(770) 389-5391 • (800) 233-3506  
Fax: (770) 389-4572

1296 Wintercamp Trail  
Hedgesville, WV 25427-5360  
(888) 722-1403  
Fax: (304) 754-6033

**PRESIDENT**  
Jack L. Roberts

11 June 2003

**SENIOR  
VICE PRESIDENT**  
Jeff Fluck  
North Carolina

The Honorable Charlie Norwood  
2452 Rayburn House Office Building  
Washington, DC 20515

Dear Congressman Norwood,

**VICE PRESIDENT**  
Steve Helton  
Tennessee

The Southern States Benevolent Police Association is proud to endorse the *Homeland Security Enhancement Act*. Thanks to your leadership, this bill will close some of the gaping loopholes that presently exist. It gives the police component of first responders a solid ability to do their part in homeland security.

**SECRETARY/  
TREASURER**  
Michael A. Haag, Sr.  
South Carolina

Fighting the war on crime and terrorism is a daunting task. Having our hands tied behind our backs by misinformation about what laws we can enforce is crippling our ability to secure our communities.

**BOARD MEMBER**  
Donald Scott  
Alabama

The *Homeland Security Enhancement Act* not only clarifies legal authority, but also builds upon the existing inherent authority that states and local jurisdictions already have as sovereign entities. It also puts information in the hands of the cop on the beat, builds upon the current means of information sharing, and promotes two-way information flow, which is crucial to good law enforcement. Further, the bill provides resources to help cover the costs of detention, processing, and transportation that fall heavily upon state and local taxpayers.

**BOARD MEMBER**  
Chris Skinner  
Mississippi

The bill's key underlying principles are respect for federalism, promoting the rule of law, holding individuals who break the law accountable for their actions, and promoting the maximum flexibility and creativity in addressing particular challenges to ensuring homeland security that may face a specific location in the most common-sense, practical manner possible.

**BOARD MEMBER**  
Richard Banks  
South Carolina

**BOARD MEMBER**  
Beth Dyke  
Tennessee

The Southern States Benevolent Police Association is very pleased to support the *Homeland Security Enhancement Act*. We congratulate you for taking the initiative to fix the problems this bill is aimed at, and look forward to working closely with you to ensure its enactment into law.

**BOARD MEMBER**  
David Graham  
Virginia

Sincerely,

  
H.G. "Bill" Thompson

**REGIONAL DIRECTOR**  
J.T. Martin  
Tennessee

**DIRECTOR  
GOVERNMENTAL  
AFFAIRS**  
H.G. "Bill" Thompson

*The Voice of Law Enforcement Officers*

ELLEN T. HANSON • CHIEF OF POLICE



12500 WEST 87TH STREET PARKWAY  
LENEXA, KANSAS 66215  
OFFICE • 913/477-7300  
FAX • 913/888-8690

SEP 08 2003

August 26, 2003

Congressman Dennis Moore  
431 Cannon House Office Building  
Washington, DC 20515

Dear Congressman Moore,

The City of Lenexa and the Lenexa Police Department have made a commitment in recent years to build a good working relationship between police employees and members of the minority community. As the minority population has grown in Lenexa we have worked at learning and understanding cultural differences to better service their needs. Progress has been made and we continue to direct resources to this important issue.

With that in mind, recent legislation, the Clear Law Enforcement for Criminal Alien Removal Act of 2003 (CLEAR) causes us considerable concern. This Act would require local law enforcement officers to assume responsibilities presently handled by INS and would add the enforcement of civil immigration laws to long list of current responsibilities. This Act poses several areas of concern and could negatively impact Lenexa in the following ways.

- We are, like many jurisdictions across the country, short on resources and manpower and struggling to meet our citizen's service demands. This mandate will magnify that problem and force us to make cuts in other areas to comply with the CLEAR Act.
- We are not trained in immigration law and to reach a satisfactory level of proficiency would require both time and money, both of which are at a premium.

- It would appear on the surface that this act could be construed to contain components of racial profiling. This agency and law enforcement in general have worked diligently over the last few years to assure citizens that racial profiling is not tolerated in professional law enforcement agencies. This piece of legislation could damage the credibility we have worked so hard to establish.
- The most troubling aspect of this act is that it could cause members of certain groups to not report crimes or come forward with information about crimes for fear of being deported. The level of public safety we should deliver to these groups as well as the trust we are attempting to establish in our community could be severely damaged by the CLEAR Act.

We would ask you to oppose the CLEAR Act and ask you to urge others to vote in a similar manner. Thank you for your attention to this matter.

Sincerely,



Ellen T. Hanson  
Chief of Police

---





Representative Dennis Moore  
431 Cannon House Office Building  
Washington, D.C. 20515

September 15, 2003

Re: H.R. 2671, "Clear Law Enforcement for Criminal Alien Removal Act of 2003"  
("CLEAR Act")<sup>1</sup>

Dear Dennis,

We, the undersigned advocates for immigrant survivors of domestic violence, sexual assault, trafficking and other crimes, are alarmed by recently introduced legislation that would deputize local police to enforce federal immigration law. The "CLEAR Act" will further endanger already vulnerable immigrant populations, particularly battered immigrant women and their children, who will be afraid to report abuse and seek help for fear of the immigration consequences. The CLEAR Act will also seriously undercut the comprehensive scheme of federal protections for these victims that has been painstakingly erected by the Violence Against Women Act of 1994 ("VAWA") and its successors. Through these humanitarian measures, Congress has repeatedly expressed its commitment to ensuring battered immigrant women's access to police protection. We urge you to work to defeat this bill so that the victims on whose behalf Congress has unequivocally acted to date will not be silenced.

Battered immigrant women and children often face special problems when they try to escape abuse. The isolation that battered immigrants already experience due to language difficulties or cultural differences is turned to cruel advantage by their abusers, who feed them misinformation about the legal system and their rights. If they call the police, these victims fear that they, or the abusers on whom they or their children may rely for support, will be turned over to the Department of Homeland Security (DHS) and deported.<sup>2</sup> Many also fear they will lose custody of their children to their abusive husband if they are deported.<sup>3</sup> Abusers may themselves report their victims to the DHS in retaliation for contacting law enforcement, or threaten to do so.<sup>4</sup>

<sup>1</sup> Introduced July 9, 2003 by Representatives Norwood (R-GA), Hart (R-PA), Deal (R-GA), and Boyd (D-FL).

<sup>2</sup> "A survey conducted by *Ayuda* in 1993 noted that 83% of the battered immigrants interviewed did not contact law enforcement about the abuse. In many cases, this was directly related to their fear of deportation." Leslye Orloff and Rachel Little, *Ensuring that Battered Immigrants Who Seek Help from the Justice System are not Reported to the INS*, in *Somewhere to Turn: Making Domestic Violence Services Accessible to Battered Immigrant Women* 278, 279 (1999).

<sup>3</sup> Orloff and Little at 280-281.

Even for women whose immigration status is stable, this threat can be an effective means for abusers to exert their control.

To overcome these barriers, Congress passed the Violence Against Women Act of 1994 ("VAWA") and the Trafficking Victims and Violence Protection Act of 2000 ("VAWA II"). These Acts intend that non-citizens who are married to U.S. citizens or legal permanent residents and are victims of violence need not fear deportation if they report the abuse to law enforcement. Battered women in this position may also petition DHS on their own behalf, rather than derivatively through their partners, for legal immigration status.<sup>3</sup> VAWA II expanded VAWA protections and improved battered immigrant access to public assistance. Significantly, VAWA II also created two new visa categories that provide relief to immigrant victims of crimes and trafficking who cooperate with local law enforcement in the investigation or prosecution of the crime: the "T" visa and the "U" visa. These visas are meant to ensure that undocumented victims of crime who have suffered substantial physical or emotional injury are not further victimized by harsh immigration consequences.<sup>4</sup> *Collectively, the provisions of VAWA and VAWA II seek to encourage immigrant victims to report crimes without fear of deportation.*

The CLEAR Act would eviscerate the public policy interests of VAWA and VAWA II and erase hard-won gains by law enforcement of the trust of immigrant communities.<sup>5</sup> Already, our colleagues across the country have witnessed the damage that opportunistic batterers can do in the current anti-immigrant environment. In a number of recent cases, even women whose self-petitions under VAWA have been approved have nonetheless been deported, and many others are fighting deportation, because the wheels set in motion by batterers who report them to the authorities have moved more swiftly than those offering them the relief and protection to which they are legally entitled.

By causing law enforcement's focus to revert from the victim's safety to the victim's immigration status, the CLEAR Act would only exacerbate this disturbing trend. *The "chilling effect" that the CLEAR Act will have on the reporting of crime by immigrant victims and witnesses will be immediate and severe.* Domestic violence victims will once more be forced to make an impossible choice between deportation – and the abrupt separation from their children that this may entail – and continued abuse. The CLEAR Act thus effectively enhances the power of the batterer and strengthens the weapons in his arsenal.

<sup>3</sup> A woman who is married to a U.S. citizen or legal permanent resident is entitled to derivative immigration status by being included in the petition of her spouse or fiancé. Where domestic violence is an issue, it is overwhelmingly the case that the abuser will exclude his victim from his own petition, or threaten to have her removed once added, in order to reinforce his dominance.

<sup>4</sup> In passing VAWA, Congress recognized that immigration laws had actually fostered the abuse of many immigrant women by placing their ability to gain permanent lawful immigration status in the complete control of their abuser – their U.S. citizen or legal permanent resident spouse. H.R. Rep. No. 395, 103d Cong., 1<sup>st</sup> Sess., 26 (1993), 26-27.

<sup>5</sup> H.R. Conf. Rep. No. 939, 106<sup>th</sup> Cong., 2<sup>nd</sup> Sess., 72 (2000).

<sup>7</sup> Walt Laramie, Supervisor of DHS' Vermont Service Center's VAWA Unit, has estimated that the applications for relief of over 25,000 immigrant women have been approved since the passage of VAWA. Walt Laramie, address, Five State Summit, Minneapolis, Minnesota, 28-31 July, 2003.

At the same time, the CLEAR Act will also tie our hands as service providers who seek to act in our clients' best interests. Through our programs, we daily come into contact with women who fear for their lives from abusive partners. Drawing up a "safety plan" – how to escape a violent situation, what friends might offer shelter, and most importantly, where to turn for help from the authorities – is therefore an integral part of the services we provide. If the CLEAR Act is allowed to put battered women's immigration status before their safety, how then can we responsibly counsel them to "call the police" or "seek a restraining order" when deportation may result, bringing with it its own set of serious risks to their security? Given that police are among the "first responders" to 911 calls, battered immigrant women may also be afraid to seek urgently needed medical attention after a beating, let alone to call for immediately needed police intervention during a beating.

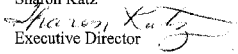
As the cases above demonstrate, there are compelling reasons why only specifically trained immigration officers with in-depth knowledge of the relevant law should ever inquire into the legal status of immigrant crime victims. The highly complex and sensitive nature of the relief afforded immigrant crime victims under VAWA and its successors demands a sophisticated understanding of the law if its purpose is to be realized. Recognizing this, DHS maintains a specialized "VAWA Unit" that currently processes and adjudicates all such applications.

Yet at a time when greater expertise is necessary to give full effect to VAWA's promise, police under the CLEAR Act will be permitted to operate in ignorance of the special immigration laws impacting abused women. The typical DHS enforcement agent undergoes extensive training lasting several weeks. It is impractical to expect that local police will commit more than a fraction of this time to learning the intricacies of immigration law. And pursuant to the CLEAR Act, though the Attorney General and DHS Secretary must make training about how to enforce U.S. immigration law as available as possible, *this training is not required before state and local police can begin to enforce immigration law.*<sup>8</sup> The CLEAR Act's failure to appreciate the complexity of immigration law will have disastrous consequences for immigrant crime victims who will be confronted by poorly informed law enforcement officers charged with an aggressive anti-immigrant mandate.

Finally, the CLEAR Act also works at cross-purposes to long-standing policies on community policing developed by thoughtful law enforcement agencies across the country. Inquiries into the immigration status of victims and witnesses significantly erode immigrant community cooperation with the police and confidence in the judiciary, and can only result in less safe communities for us all. For victims of domestic violence this practice can be lethal, driving a victim who has finally turned to the police or the courts for protection back into an increasingly violent home.

Your vocal opposition to the CLEAR Act is critically needed. Thank you for your attention to this important matter.

Sincerely,  
Sharon Katz

  
Executive Director

<sup>8</sup> H.R. 2671 "Clear Law Enforcement for Criminal Alien Removal Act of 2003," §109.

**Boston Police**  
Office of the Police Commissioner

1 Schroeder Plaza, Boston, MA 02120-2014

September 30, 2003

Senator Edward M. Kennedy  
2400 JFK Federal Building  
Boston, MA 02203

Dear Senator Kennedy:

I am concerned about a movement underway in the House of Representatives that would have state and local police enforce civil immigration laws.

I continue to take seriously the threat of terrorism in our post 9/11 world, and support efforts that will mitigate that threat. In fact, the Boston Police Department is working hard to ensure we are as prepared as possible to prevent and respond to a terrorist incident. Many of our efforts are being made in partnership with our community, including law enforcement and other government agencies, private and non-profit organizations, and the people of Boston.

In recent years, we have made great progress at the Boston Police Department in our efforts to prevent crime and reduce fear. Our success is due in large part to our ability to partner with the communities we serve. Now, it is my fear that the CLEAR Act will impair those partnerships.

The Boston Police Department, as well as state and local police departments across the nation have worked diligently to gain the trust of immigrant residents and convince them that it is safe to contact and work with police. By turning all police officers into immigration agents, the CLEAR Act will discourage immigrants from coming forward to report crimes and suspicious activity, making our streets less safe as a result.

I ask that you continue your efforts to do all that is possible to protect us from the threat of terrorism, but also make sure that police departments can continue to maintain strong relationships with the diverse communities they serve. Thank you for your attention to this important matter.

Sincerely,



Paul F. Evans  
Police Commissioner



## CITY OF NEWARK, CALIFORNIA

37101 Newark Boulevard • Newark, California 94560-3786 • (510) 793-1400 • FAX (510) 794-2306

September 17, 2003

The Honorable Pete Stark  
 United States Representative  
 239 Cannon Building  
 Washington, DC 20510

Dear Representative Stark:

I am writing this letter to urge you to oppose the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act, H.R. 2671, introduced by Representative Charles Norwood (R-9th/GA).

As you are aware, the State of California has a large population of both of legal and illegal immigrants. Police agencies in California have worked very hard over the years to gain the confidence of their diverse population. We deal with immigrants from all over the world, many who are steeped in beliefs and practices that alienate them from law enforcement. We have worked long and hard to gain their trust.

The CLEAR Act would require state and local police to enforce civil immigration laws, or lose federal funds earmarked to reimburse them for detaining criminal lawbreakers. This bill would also expand the scope of the National Crime Information Center database, which is accessed in routine situations by police to identify wanted criminals, to include individuals solely based upon their immigration status.

Currently, local law enforcement authorities already provide cooperation and assistance to federal authorities on immigration matters in the context of persons in custody for violations of state and local laws. This bill, however, would require police to arrest and detain persons based upon suspected or alleged violations of *civil* immigration laws, thereby diverting state and local law enforcement agencies from enforcing state *criminal* laws.

By turning police into immigration agents, all of our agency's efforts to gain the trust of immigrants – both legal and illegal – would be undermined as immigrants would be discouraged from coming forward to report crimes and suspicious activity.

The California Police Chiefs Association in an April 10, 2002, letter to the United State Department of Justice stated, "It is the strong opinion of the California Police Chiefs Association leadership that in order for local and state law enforcement organizations to continue to be effective partners with their communities, it is imperative that they not be placed in the role of detaining and arresting individuals based solely on a change in their immigration status."

If passed, the CLEAR Act would make state and local law enforcement officers' job nearly impossible and move us further from the goal we all share of making our communities safer. I strongly urge you to oppose this bill.

Sincerely,

  
 RAY SAMUELS  
 Chief of Police



October 08, 2003

F. James Sensenbrenner, Jr.  
United States House of Representatives  
Committee on the Judiciary  
2138 Rayburn HOB  
Washington, D.C. 20515

RE: OPPOSE CLEAR ACT

Dear Chairman Sensenbrenner:

The National Center for Lesbian Rights ("NCLR") requests that you oppose H.R. 2671, the "Clear Law Enforcement for Criminal Alien Removal Act of 2003," ("The CLEAR Act"), introduced on July 9, 2003, by Representative Charles Norwood (R-Georgia). NCLR is a national legal resource center with a primary commitment to advancing the rights and safety of lesbians and their families through a program of litigation, public policy advocacy, free legal advice and counseling, and public education.

The CLEAR Act poses many dangers to the efficiency of our criminal justice system by dramatically increasing the number of immigrants in detention, creating harmful consequences for public safety and homeland security, and treading on core provisions of our Constitution.

The CLEAR Act criminalizes many immigration violations that are now civil in nature. Channeling millions more individuals through the criminal justice and immigration detention system would easily overwhelm the system and tax payers. Sadly, criminals are not the target, but individuals with minor paperwork violations such as tourists and students who may have dropped a class. This detention also separates families unjustly.

In the CLEAR Act, the federal government is asking states to divert their already scarce law enforcement resources away from traditional crime fighting, so they can become immigration agents. Immigration law is complex and officers require substantial training before being able to perform their duties. The CLEAR Act will substantially increase the burden on local departments as well as officers. The creation of the National Crime Information Center (NCIC) will be corrupted from its original intent and purpose of the NCIC away from finding violent criminals by adding immigrants with minor violations in it. In addition, the CLEAR Act will hamper community relations established by police departments. These relations are key to fighting crime and terrorism in the U.S.

The CLEAR Act violates core constitutional principles by mixing federal and state rights and issues. In addition, individuals can be detained for up to a week and a half before the Department of Homeland Security is informed of the detention. The CLEAR Act also has the potential of becoming a tool of racial profiling, in violation of the Fourth Amendment.

NCLR believes the CLEAR Act is bad public policy, particularly because so many state and local police have indicated that enforcing civil immigration laws actually undermines their ability to enhance public safety. If we are really concerned about keeping criminals off the street, we should not ask state and local governments to make this trade-off.

Sincerely,

Marta Donayre

Public Education Director

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Development Associate

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OCT 22 2003

Immigration and Claims



Christian Coalition of America

October 22, 2003

Representative James Sensenbrenner  
Chairman, House Judiciary Committee  
2138 Rayburn House Office Building  
Washington D.C., 20515

Dear Chairman Sensenbrenner,

Christian Coalition of America strongly supports the bill, H.R. 2671, the "Clear Law Enforcement for criminal Alien Removal Act" which now has 106 co-sponsors. Thank you for holding the hearing this month on this legislation, and I request that our letter be included in the official record.


The American people are sick and tired of millions of illegal aliens coming across our borders taking advantages of this country's privileges and benefits and moving ahead in the line of millions of others around the world who are waiting to come legally into this country. We now have some 4-5 million illegal criminal aliens. We need to take advantage of the over 700,000 state and local police and let them be a part of our homeland security. And the CLEAR Act will do just that. Congress has the responsibility to protect our borders.

This bill will empower these state and local police officers to take action when they come across illegal criminal aliens. The CLEAR Act will delineate what these officers can and cannot do. Included in this bill are the resources needed to detain, transport and process these aliens whom these local and state police officers apprehend. There are no unfunded mandates in this bill. It respects states' rights. No new government bureaucracies are created.

Christian Coalition of America wants to see Congress pass this commonsense conservative piece of legislation during the 108<sup>th</sup> Congress. We need to see our nation's borders protected and passing the CLEAR Act will go a long way to doing just that.


Sincerely,

Roberta Combs  
President  
Christian Coalition of America



## National Taxpayers Union & NTU Foundation

October 27, 2003



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**For Immediate Release Tuesday, September 9, 2003**  
 For Further Information, Contact:  
 Pete Sepp or Maureen Tell, (703) 683-5700

**Two Years After 9/11, Report Sounds Timely  
Warning: To Defend U.S. Borders, Attack U.S.  
Bureaucracy**

(Alexandria, VA) -- As Americans pause to ponder their nation's security on the second anniversary of 9/11 this week, a study from the National Taxpayers Union Foundation (NTUF) is providing a timely warning: the Department of Homeland Security's (DHS's) inherited problems of transforming the U.S. border control bureaucracy could still be helping terrorists even as they are harming taxpayers.

"The Department of Homeland Security must re-dedicate itself to operating under different guidelines from the agencies it replaced, or Americans may not see the maximum return on their considerable investment of tax dollars," NTUF President John Berthoud cautioned. "Like investors examining a mutual fund prospectus, taxpayers evaluating DHS's border policy initiatives are all too familiar with the phrase, past performance does not guarantee future results."

Berthoud has reason to be concerned about the progress of DHS's reforms, specifically in the area of illegal immigration. Although DHS took over the Immigration and Naturalization Service (INS) earlier this year, little has changed. In fact, while Berthoud agrees that the "Bush Administration and DHS have enormous challenges ahead," he contends that "protecting the nation's borders may be as vital to America's fiscal stability as its national security." For example, numerous reports from the General Accounting Office and federal Inspector General offices have linked billions of dollars in law enforcement, prison, health care, Earned Income Credit, and other fiscal burdens to problems of illegal immigration.

The study, authored by NTUF Associate Policy Analyst Jim Tyrell, offers remedies for DHS:

- Collaborate with law enforcement on the local, state, and federal levels that are monitoring or assisting in the apprehension of illegal immigrants. This will help stabilize



immigration, reduce border security concerns, and lessen the administrative cost burdens on taxpayers.

- Work more aggressively to root out fraudulent benefit payments to illegal immigrants who often make disproportionate use of federal health, safety, and income support programs. This should include permanently prohibiting acceptance of the abuse-prone "Matricula Consular" card as valid identification in the U.S., which has helped to qualify immigrants for many tax-funded programs.
- Follow the mandates of laws passed in 1996 and 2001, which require the federal government, and DHS in particular, to fully fund, develop, and integrate the Exit-Entry System for tracking and smoothly processing immigrants.

Berthoud admits that some of these measures fell short when the INS attempted them, but "remembering past failures is the first step to future success. For border security, that future must be counted in weeks and months, not years. Illegal immigration has cost American taxpayers far too much for far too long."

NTUF is the research arm of the 350,000-member National Taxpayers Union, a nonpartisan citizen organization founded in 1969. *Note: NTUF Policy Paper 144, Borderline Infraction: Unsafe Borders, Complacent Government?, is available online at [www.ntu.org](http://www.ntu.org).*

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### **Borderline Infraction: Unsafe Borders, Complacent Government?**

NTUF Policy Paper 144

By Jim Tyrell  
September 9, 2003

Charlene Posey, a Border Patrol agent assigned to Operation Rio Grande in the early 1990s said, "I'm getting paid good money to sit here and not do my job. I think it's important for (taxpayers) to know how their money is being spent."<sup>1</sup> The agent's opinion is not uncommon; many agents, and taxpayers, along the Southwest border feel the same way.

Although there are many differences of opinion over the proper level of immigration, the system that monitors immigration to the United States is clearly ailing. The economy remains weak and homeland security is threatened due to poor law enforcement, external advocacy groups, and pure administrative apathy along the Southwest border, which is one of the most vulnerable points of entry into the United States. At a time when our color-coded terrorist threat indicator fluctuates between yellow – "elevated" and orange – "high," perhaps, while the U.S. scrutinizes the potential threats of foreign countries, we should also look at our current policies at home.

On November 25, 2002, President George W. Bush signed legislation to establish a Department of Homeland Security (DHS) with the intent of strengthening our nation's security, part of which includes the legacy of the Immigration and Naturalization Service (INS). On March 1, 2003, the agency once charged with immigration services and enforcement responsibilities was divided into three distinct bureaus under DHS, including the Bureau of Citizenship and Immigration Services (BCIS), the Bureau of Customs and Border Protection (CBP), and the Bureau of Immigration and Customs Enforcement (BICE). Each bureau, with its own mission and management, faces unique challenges in addressing old INS problems and new homeland security concerns.

In February, the Inspector General of the Department of Justice released a report indicating that INS continued to be largely unsuccessful at removing aliens who are not detained (only 13 percent of non-detained aliens with final removal orders, and only three percent of non-detained aliens who were seeking asylum).<sup>2</sup>

In the first government report on illegal immigration issued since 1996, the INS announced that there were about 7 million illegal aliens living in the U.S. in 2000, an increase of about 300,000 illegal immigrants annually.<sup>3</sup>

More troubling is that, according to the Center for Immigration Studies (CIS), about 80,000 of the illegal aliens entering the U.S. from 1996 to 2000 were from countries now considered to be a threat to national security. Although, by law, residents of those countries must now register with immigration services before entering the U.S., it is well known that most illegal aliens initially enter the U.S. legally and overstay their visas. The chance that undocumented, illegal aliens from "terror watch" countries are roaming throughout the U.S. is fearfully high.

The INS report also indicated that Mexico is the largest source of illegal immigration into the U.S. The estimated illegal alien population from Mexico increased from about two million in 1990 to 4.8 million in January 2000, and has increased its "share" of all immigrants entering the U.S. illegally from less than 60 percent to nearly 70 percent.<sup>4</sup> Also, as indicated by a recent Central Intelligence Agency (CIA) estimate, 300,000 people, who are not Mexicans, illegally cross the southern border every year.<sup>5</sup>

Nearly as staggering is the number of bills introduced in Congress after the events of September 11<sup>th</sup>, 2001 to better monitor and account for overstayed visas. There were over 180 pieces of legislation directly or indirectly related to immigrants, immigration control, or immigration enforcement. Three pieces of legislation in particular ultimately became law, and are intended to fight terrorism, monitor immigration, and help secure the borders:

**Aviation and Transportation Security Act - S.1447 (PL 107-71)**  
**Enhanced Border Security and Visa Reform Act of 2001 - S.1424 (PL 107-173)**  
**USA PATRIOT Act of 2001 - H.R.3162 (PL 107-56)**

Together, the above legislation has an accumulated cost of over \$9 billion over the next five years. This cost may seem unnecessarily high. However, after a General Accounting Office (GAO) investigative probe of the country's ports of entry found that "in every instance, our border was penetrated,"<sup>6</sup> some may say such a price is necessary. Of course, spending reductions in other low-priority programs could easily offset these costs.

To test security of our borders, GAO investigators used fake identifications to enter the U.S., which led Senator Charles E. Grassley (R-IA) to note the similarity between immigrants sneaking across our borders and college students slipping past bouncers.<sup>7</sup> What good is a continuous state of alert if thousands of people are crossing our borders and checkpoints undetected everyday?

#### ***A Blind Eye for Illegals***

Border security operations such as Operation Blockade, initiated in 1993 in El Paso, Texas, and Operation Gatekeeper in San Diego, California in 1994, were successful in the fact that they logged a record 1.6 million arrests by 1999 at chaotic and often dangerous points of entry. However, the operations also failed, by effectively causing

thousands of illegal immigrants to funnel into the harsh deserts and peaceful ranching communities of Arizona.

Each operation called for agents to guard specific high-volume areas where migrants were known to cross in large groups, rather than the traditional tactics of routine patrolling throughout the entire region. However, immigrants eventually adapted to the new strategy and began to shift their efforts toward the Arizona ranching communities and deserts. Although the migrants shifted, the border agents did not, due to administrative restraints. Agency managers were still satisfied with the number of arrests and "effective" means of deterrence.

Scott Avery, President of the Border Patrol union in the area, said, "I thought we were supposed to keep people from entering the country, not just somewhere else."<sup>8</sup> Agents were left to pass the time by drinking coffee, or listening to the radio. Because management was content with the success of deterring migrants in one area, agents were essentially paid to knowingly allow illegal immigrants to enter elsewhere.

The results of these administrative decisions are felt throughout Arizona and the Southwest border today. Illegal immigrants swarm into ranching communities such as Douglas, Arizona, leaving ranchers with broken fences, stolen property, and gates left open, allowing cattle to run free. As a media investigation reported, "One rancher estimates that the costs of constant repairs have run into the tens of thousands of dollars."<sup>9</sup> The masses of migrants also leave bottles of water, soiled diapers, human feces, and trash spread throughout citizens' property.

#### *Taxpayers Defend Against Illegals*

The problems occurring in towns such as Douglas have become so difficult that some ranchers have taken action into their own hands. Ranchers, trying to defend their land, homes, and families, round up migrants and hold them until Border Patrol agents come to take them away.

Citizens along the border, including Chris Simcox, a former kindergarten teacher, have taken it upon themselves to form militias. Simcox, who organized the 600-member Tombstone Militia stated, "It's a monumental disgrace that our government is letting the American people down, turning us into the expendable casualties of the war on terrorism."<sup>10</sup>

Ranchers and citizen militia groups often face prosecution from state and local officials for defending their homes and lives. Lawyers for advocacy groups and the Mexican government "demand that the ranchers be prosecuted for false arrests, kidnapping, intimidation, criminal assault, violation of civil rights, in short anything lawyers can come up with to advance their clients' interests."<sup>11</sup> One rancher states, "The only rights that have been violated are those of American citizens whose privacy, property, and nation are being invaded from Mexico."<sup>12</sup> In the words of Representative Raul Grijalva (D-AZ), "We have a failed border policy."<sup>13</sup>

### *Free Medical Care for Illegals*

Border Patrol agents also allow Mexican ambulances and private cars to cross the border unchecked when carrying critically ill Mexican citizens, or at least what appear to be critically ill Mexican citizens.<sup>14</sup> The issue of diseased, injured, and uninsured Mexicans crossing the border unscathed to receive medical care from American hospitals has been costing taxpayers for years. It's an unspoken agreement between the Mexican and American governments that anybody on the border can come and get treated in an American hospital, paid for by taxpayers, because most of the patients don't have the money.<sup>15</sup>

The American Hospital Association's annual survey found that Southwest border county hospitals reported uncompensated care totaling nearly \$832 million in 2000. Statistical modeling determined that \$190 million, or 25 percent, of these costs resulted from emergency medical treatment provided to migrants.<sup>16</sup>

Ranking	State	Estimated Number of Undocumented Immigrants	% Distribution of Undocumented Immigrants	Allotment
1	California	2,000,000	45.34%	\$11,335,298
2	Texas	700,000	15.87%	\$3,967,564
3	New York	540,000	12.24%	\$3,060,530
4	Florida	350,000	7.93%	\$1,983,677
5	Illinois	290,000	6.57%	\$1,643,618
6	New Jersey	135,000	3.06%	\$765,133
7	Arizona	115,000	2.61%	\$651,780
8	Massachusetts	85,000	1.93%	\$481,750
9	Virginia	55,000	1.25%	\$311,721
10	Washington	52,000	1.18%	\$294,718
11	Colorado	45,000	1.02%	\$255,044
12	Maryland	44,000	1.00%	\$249,377
TOTAL		4,411,000	100.00%	\$25,000,000

Source: Center for Medicaid and State Operations, Health Care Financing Administration.

According to the Emergency Medical Treatment and Active Labor Act, hospitals must treat anyone who shows up for care, despite the fact they may be an illegal alien and a threat to national security. No wonder an Arizona newspaper concluded, "Hospitals in Mexico are pointing the ambulances north when they discover a patient can't pay for service and has no insurance."<sup>17</sup>

Senators Jon Kyl (R-AZ) and John McCain (R-AZ) have sponsored legislation to reimburse hospitals along the border by as much as \$1.45 billion annually. Senator Kyl has acknowledged the federal government has not been willing to provide financial support to health care providers along the border to pay for federally mandated treatment of illegal aliens.<sup>18</sup> Secretary of Health Tommy Thompson has also indicated he will ask Congress for \$25 million for border health initiatives.<sup>19</sup> Although some officials have made steps toward easing the burden on some public services along the border, others are supporting programs that will add to the influx of illegals.

#### *Advocacy Groups for Illegals*

Humane Borders is one of the leading civilian organizations aiding the efforts of illegal immigrants trying to enter the U.S., in turn increasing the frustrations of victimized ranchers and citizens. Humane Borders is a Tucson-based humanitarian group, organized in June of 2001 in response to an incident involving 14 migrants who died of dehydration in the Arizona desert (trying to smuggle themselves across). The group's efforts primarily consist of setting up water stations at various points throughout the Arizona desert, but experts conclude "its real intent is to force the federal government to ease restrictions on immigration."<sup>20</sup>

Humane Borders also had a critical role in leading the public outcry over recent migrant deaths. The group made several unsuccessful attempts to have the U.S. Fish and Wildlife Service place a water station in the Cabeza Prieta National Wildlife Refuge, a few miles from where the migrants died. As a result, two Yuma-based lawyers, representing 11 of the 14 Mexican migrants who died, filed a wrongful death suit against the agency asking the federal government and American taxpayers for over \$41 million in compensation.

In its first year of existence, Humane Borders had a budget of \$49,971, over 50 percent of which consisted of taxpayer money. During Pima County's Board of Supervisors meeting and tax levy hearing on August 20, 2001, \$25,000 was awarded to Humane Borders, "For provisions of water distribution services in areas of Pima County."<sup>21</sup> Some Tucson taxpayers rallied together to file suit against the Pima County Board of Supervisors and Humane Borders for conspiracy to misappropriate public funds. The complainants contended that their tax dollars went to provide aid and comfort to foreigners and potential terrorists willingly seeking to violate the law. Despite legal action from concerned citizens and the controversy over appropriation of public funds, there are some encouraging the dangerous work of Humane Borders, including agents of the U.S. Border Patrol. The agency has invited members of Humane Borders to meetings, shown them maps of populous migrant crossing points, and agreed not to target water stations for migrant arrests.

#### *Education for Illegals*

Border states are not the only ones left dealing with a lax border policy. The Commonwealth of Virginia recently came under fire when its Attorney General issued a

memorandum to the state's public colleges and universities to stop admitting illegal immigrants. Despite the fact that the memorandum did not obligate state colleges and universities to immediately expel its illegal students, immigrant groups such as the Mexican American Legal Defense and Education Fund still attacked the purpose of the memorandum, when clearly its purpose was to acknowledge that space within state colleges and universities is becoming very limited, and should be reserved for legal, taxpaying residents.

Concerns of tuition increases have grown recently because of the population of illegal immigrants in state colleges and universities. More illegal immigrants are attending public colleges, and university administrators are faced with tuition hikes, classification problems, and turning away taxpaying state residents. Tim Murtaugh, a spokesman for Virginia Attorney General Jerry Kilgore said, "This country is made of generations of immigrants, but to afford someone else the opportunity to take advantage of the taxpayers' support is a slap in the face to those who have entered this country and gone through the proper processes."<sup>23</sup> However, states such as California, New York, and Texas freely admit illegal immigrants with in-state tuition rates.

#### *Welfare and Means-Tested Program Benefits for Illegals*

Temporary Assistance to Needy Families, Food Stamps, Medicaid, and other programs such as subsidized school lunches cost taxpayers hundreds of billions of dollars annually, estimated at \$300 billion in 1999. Illegal immigrants consume a significant share of this staggering amount. Towns along the Southwest border are particularly subjected to illegal immigrants draining taxpayer funds. As an example, the town of San Luis, Arizona, has a population of about 3,000 residents, but 20,000 Post Office boxes exist. Mexican citizens, who live just across the border, use these addresses to collect public benefits (welfare checks) every month, which they applied for using a U.S. Post Office box as their permanent address.<sup>24</sup>

A critical issue involving illegal immigrants' use of welfare benefits is that even if they aren't eligible to receive benefits (though about 31 percent use at least one of five major benefit programs) they will collect on them because their children, who are born in the U.S., are considered native residents (and eligible for benefits). A Center for Immigration Studies analysis determined that illegal Mexican immigrants impose significant costs on public coffers because they are twice as likely to use welfare programs, and that the increasingly large numbers of unskilled workers obtain low income positions. Ultimately they have children in the U.S. and will continue to drain benefits from the American taxpayer.<sup>25</sup>

#### *Identification for Illegals*

Despite the fact that the General Services Administration (GSA) has barred the use of Mexican ID cards temporarily, House Minority Leader Nancy Pelosi (D-CA) instructed administrators at a federal building in San Francisco to accept the Mexican issued ID cards from immigrants as valid identification. The ID cards, which can be obtained

through any of the 65 Mexican consular offices in the United States, have been issued to hundreds of thousands of legal and illegal Mexican immigrants.

**With the Help of the Matricula Consular, an Illegal Immigrant Can:**

**Legally Obtain Most Required ID Cards in the United States**

Receive same driver's licenses as citizens (in 13 states)

**Reduce the Risk of Arrest and Deportation**

Police less likely to arrest, instead cite and release for minor violations  
Lower chance of being fingerprinted  
Reduced risk of background checks for past criminal acts  
Lessen chance of crosscheck with INS for repeated border crossings

**Have Access to Banking Services, Credit Cards, and Home Mortgages**

Open bank accounts  
Obtain ATM cards for relatives living in Mexico  
Leverage bank accounts to obtain credit cards  
Obtain home mortgages by building credit history  
Bank accounts lead to issuance of official U.S. identification number from the IRS

**Obtain City and State Services**

Get a hospital ID for medical services  
Register for local health department services  
Obtain marriage license  
Apply for birth or death certificate  
Enter government buildings  
Receive resident discounts for city parks, etc.

**Diminish the Difficulty of Living in the U. S.**

Rent or buy homes and apartments  
Obtain telephone and utility services  
Board airplanes

Source: Dinerstein, Marti, "IDs for Illegals," The Center for Immigration Studies, January, 2003.

Rep. Pelosi justifies her actions by indicating immigrants need to get to Internal Revenue Service offices to obtain taxpayer identifications numbers to begin working, despite the fact they may be in the country illegally, and are obtaining U.S. identification with widely recognized illegal and foreign cards.

Representative Tom Tancredo (R-CO), Chairman of the Congressional Immigration Reform Caucus said, "There is no one in the United States of America that needs a Mexican-issued ID card other than someone who is here illegally or someone here who is a felon."<sup>26</sup>

The Center for Immigration Studies recently released a study of the "Matricula Consular" cards and regarding the impact they have on homeland security and the economy.

The report indicates that, among other things, the card protects illegal immigrants from law enforcement, and makes obtaining public services routine.

The Matricula Consular is not a secure identification card because protections are not in place to prevent the issuance multiple cards

with different information to a single individual. The card has become a shield for illegal immigrants, concealing possible criminal activity. The holder's identity isn't verified when the card is issued, and local police officers often accept the card as identification without running background checks.<sup>27</sup> The Matricula Consular is now accepted by 800 local law enforcement agencies and can be presented as identification in 13 states when obtaining legal resident driver's licenses.<sup>28</sup>



The United States Treasury Department has approved the use of the Matricula Consular by banks to open accounts, allowing illegal immigrants to obtain mortgage loans, build a credit history, obtain credit cards, and use automatic teller machines for themselves as well as relatives living in Mexico.

#### ***Recommendations***

“Give me your tired, your poor, your huddled masses” – a credo that is essentially the backbone of our nation’s history, growth, and culture. It is as true today as it was hundreds of years ago; however, another of our nation’s virtues is the ability to adapt to changing times.

Current policy regarding services to illegal immigrants and enforcement are clearly not sufficient. In a new era of heightened security and economic struggles lawmakers must face the dangers entering our country along the borders.

#### ***Utilize Local Law Enforcement***

Local, state, and federal law enforcement officers are well aware of the dangers that exist along the Southwest border. However, due to the variety of barriers previously discussed, the lines of communication amongst jurisdictions are blurred. Eliminating these barriers is the responsibility of DHS and its agencies.

One of the many justifications for DHS was to streamline local, state, and federal lines of communication. As DHS morphs into the third largest government entity, one of its biggest priorities must be to collaborate with law enforcement on the local level. If, for example, a local police officer in Douglas, Arizona can communicate directly with federal agents, the spectacle of illegal immigrants milking innocent taxpayers may become much rarer.

The complexities associated with clear lines of communication reach far beyond the ability to communicate with each other when problems arise. Greater awareness for the future also involves cooperative and participatory information sharing in routine matters as well. With that in mind, state and local law enforcement officials should have an active role in the new terrorism agency developed by the Bush Administration, in an effort to integrate intelligence information.

Although Administration officials deny the notion that the new Terrorist Threat Integration Center shares very similar intelligence operations now entrusted to DHS, state and local officials should be able to work with the new agency as well as they should with DHS. Any information regarding illegal immigrants could be pertinent to homeland security, and to state and local officials who are monitoring or assisting in the apprehension of illegal immigrants. Information sharing has been a bureaucratic obstacle prohibiting the active enforcement of immigration laws. Eliminating this and other barriers will help reduce border security concerns and help lessen the administrative cost burdens on taxpayers.

*Re-Evaluate the Military at Home*

With tens of thousands of troops defending our freedom overseas, some say the military should do more to directly defend our freedoms at home. As intelligence agencies gather information to fight the war on terrorism at home and abroad, the porous border of the Southwest is our most vulnerable area susceptible to terrorist infiltration.

Consideration has been given to moving tens of thousands of troops, who have been stationed in Europe since the Cold War and are not involved in the Middle East build-up, to the borders of the United States. Critics argue a military presence along the borders would cause unnecessary panic in a time when even a car's backfire would cause suspicion. However, since the American public is well aware of the threat from terrorists, and have seen the level of their resolve by the attacks of September 11, a military presence along the borders could ease tensions, not increase them.

Critics also fear troops equipped with machine guns wandering our city streets and neighborhoods, but that is not what is necessary. What is critical is patrolling the vast deserts and rough terrain where Border Patrol agents can't watch all of the time. DHS plans to hire thousands of new agents for our ports of entry along the border, which is a very positive decision for the new Bureau of Customs and Border Protection. However, that won't discourage the thousands of illegals smuggling themselves through our dangerous, unofficial entrances.

In addition, critics question the authority a military presence along the borders would have with DHS agencies, and with local and state law enforcement agents who are already present. Military personnel along the Southwest border could be deployed in a guarding and deterrent capacity only. Communications, a major problem within the border security agencies, wouldn't be as significant a problem. Military officials would simply detain and turn over illegals, or suspected illegals, to DHS authorities. Military officials shouldn't have the authority to decide immigration status, or request proper identification.

After due debate, taxpayers and policymakers may decide against a major military re-deployment in the Southwest. In May of 2003, the House of Representatives enacted legislation authorizing the use of troops on the borders of the United States, should the Secretary of Defense and the Secretary of Homeland Security feel it is needed to curtail the flow of illegal border-crossers. While it has yet to be discussed in the Senate, the debate over this admittedly controversial issue has just begun.

*The Entry-Exit System: Integrate the Mandate*

The USA PATRIOT Act of 2001 requires the federal government, and DHS in particular, to fully fund, develop, and integrate the Exit-Entry System mandated by 1996 legislation. Various costs (ranging from \$136-\$165 million) have been estimated to make the Entry-Exit System operational, but such an arrangement could more than pay

for itself by stopping fraudulent federal program benefits. The system will be an automated computer database used at all ports of entry to identify those who overstay their visas, and will make the process of determining those who are eligible to stay, and those who have received their final orders, more efficient and responsive. The current paper-based procedures are time-consuming and less reliable.

The Entry-Exit System has many more benefits that would improve our homeland security and economy. If an individual is detained, and they are not in the system, they can receive their final orders to leave the country more expeditiously. Local, state, and federal law enforcement officials can easily refer to the system in any circumstance when determining an alien's status. Integrating the system will make those who consider crossing the border through the desert, or anywhere other than an official port of entry, think twice. If caught in the U.S., and not in the system, they could immediately be deported. Problems concerning efficiently removing those who have overstayed their visas will be dramatically reduced.

#### ***Prohibit Matricula Consular***

Implementation of the Entry-Exit System can also address the problems caused by the Matricula Consular identification card. Illegal immigrants are more likely to use the card because they are the only individuals in need of them. Legislation must be sponsored, discussed, and enacted to prohibit the use of the card as valid identification in the U.S.

The card can be obtained in any number of ways for a very small price, and has a trickle-down effect on the U.S. economy and security. Not only does it serve as an unwarranted impediment to law enforcement officials, it also allows illegals to obtain valid U.S. identification, and thus obtain public services such as welfare benefits. Accepting the card without safeguards is simply poor public policy, and it's the role of public administrators and lawmakers to eliminate the card from circulation. However, if the Bush administration and the Mexican government are serious about making significant immigration reforms, the card could even be used to benefit this process.

The Mexican government, in a good faith effort to stabilize immigration concerns with the U.S., could work with U.S. authorities to use the card as a means to track legal immigrants. The card can be used as identification to indicate legal residence in Mexico, and immigration status in the U.S., but not as a foreign amnesty pass entitling all immigrants (legal and illegal) to public services.

Maintaining immigration policies with Mexico is a critical policy issue and can be successfully accomplished in the interests of both countries through cooperation and an understanding of each other's concerns. The Matricula Consular could be used as a tool for more accountable immigration policies. But under current regulations, the Administration, Congress, and the U.S. Department of Treasury must follow the lead of GSA, and prohibit the acceptance of this unsecured identification card until further reforms are considered.

*Weed Out Illegals from Legals through Policy*

Lawmakers should also develop stronger legislation stressing the importance of maintaining the legal status of visas. By allowing illegal immigrants to obtain public services such as welfare benefits, or admission to public colleges and universities, public administrators are cheating the taxpayer. Public administrators often miss a basic concept when considering policy regarding illegal immigrants – **they are here illegally!** Lawmakers should resist special interests when developing more stringent legislative language.

The Bureau of Citizenship and Immigration Services in DHS can also begin to develop initiatives to more efficiently and responsively issue updated visa documentation to those who are legally in the U.S. This is the only way significant reform, designed to remove those who are in the U.S. illegally, can be implemented. DHS must tackle the backlog of millions of immigration documents, many of which legal immigrants are anxiously awaiting. There have been many attempts by INS to address the backlog problem over the years, but this will take technology, namely the Entry-Exit System. Until that day comes, the problem is in the hands of DHS management.

The Bureau of Citizenship and Immigration Services should be a customer-driven, citizenry-centric agency. Departmental leadership should develop an action plan by identifying key stakeholders, analyzing skill gaps among employees, and developing ways to address them without adding to the bureaucracy. Leadership should also develop a communication strategy, set specific organizational goals, and evaluate agency progress. Understanding why the INS was divided should be at the forefront of all management decisions. Every move must be made with an eye toward efficiency as well as effectiveness.<sup>29</sup>

*Conclusions*

The Constitution stipulates that the federal government must protect our borders and the homeland. The Bush Administration must consider the implications porous borders will have in our continued effort to fight terrorism. If our homeland is now considered a battlefield, the Administration must secure our perimeter with as much vigor as soldiers would in battle. The Bush Administration and DHS have enormous challenges ahead, however our problems with illegal immigration are also a threat to the American people and must be addressed.

Illegal immigration has cost the American taxpayer far too much for far too long. In a time when we are vulnerable to additional attacks on the homeland, and our economy is struggling, the Administration and lawmakers must address this source of so many problems. The Southwest border, and those who cross it, must be monitored for the sake of homeland security and economic security.

**About the Author**

Jim Tyrell served as an Associate Policy Analyst with National Taxpayers Union Foundation, the non-partisan research and educational arm of the 350,000-member National Taxpayers Union. For further information, visit [www.ntu.org](http://www.ntu.org).

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**Rep. Hostettler's question concerning Walter Sorto**  
**Gordon Quan's email response to Emily E. Sanders, Clerk, Subcommittee on Immigration,  
Border Security, and Claims**

---Original Message---

**From:** Quan, Gordon -

**Sent:** Wednesday, November 19, 2003 3:22 PM

**To:** Sanders, Emily

**Subject:** RE: information still needed.....

Please find my response to Rep. Hostettler's question concerning Walter Sorto:

I have conferred with the Houston Police Department (HPD) concerning the reporting of Mr. Sorto to the Immigration Service following his arrests. I have been advised that he was questioned by HPD and his El Salvadorian nationality was noted on his information sheet. He was transferred to the Harris County Jail where INS officials conduct reviews of prisoners to determine their immigration status if they are not U.S. citizens. We have no record as to whether or not INS interviewed Mr. Sorto during his confinement. HPD did not directly refer Mr. Sorto to INS.

Interestingly, it was Mr. Sorto himself that contacted Crime Stoppers to provide information on his accomplices that actually committed the murders. This information proved crucial to solving these murders. Mr. Sorto was recently convicted of murder for his role in these cases as well. He has been sentenced to death.

Had Mr. Sorto not felt free to provide tips to the authorities, these cases may not have been solved as soon as they were.

-----Original Message-----

**From:** Sanders, Emily

**Sent:** Monday, November 10, 2003 12:28 PM

**To:**

**Subject:** re: information still needed.....

**Importance:** High

On page 67 of the transcript you were to review and edit, you were asked questions regarding the specific case of Walter Sorto and his interactions with the Houston Police Dept. You stated that you weren't aware of the case and would check with the Houston Police Department and get back to the committee on that specific subject. We have not received any of the information for you or your staff.

The transcript is as follows.....

HOSTETTLER: Walter Sorto is an alien who apparently entered the U.S. illegally in 1995. The Houston Chronicle has reported that he has been charged with the murder, for the 2002 rapes and slayings of three women in Houston. According to information that the subcommittee has received, Sorto was arrested by the Houston Police Department in June 1999 for unlawfully carrying a weapon. [In] October 2000, Sorto was arrested by the Houston Police Department aggravated robbery for which he was convicted in December 2000. Both of those arrests occurred more than a year before the slayings of the three women. The Houston Chronicle also reports that Sorto was tickets by the Houston Police for several times--for traffic violations before the three slayings. Now, Mr. Sorto's status and robbery conviction would have rendered him--rendered him removable. Do you know of Walter Sorto--

QUAN: I don't know Walter Sorto, but the policy, as I understand it practicing immigration law for so many years is that a detainer will be placed on an individual who was not born in the U.S. for immigration to make a determination as to whether the person is legally or illegally in the U.S.

HOSTETTLER: Do you know whether the Houston Police Department ever referred him to the INS?

QUAN: I'm not familiar with that case, sir.

HOSTETTLER: If not, can you check with the Houston police and--

QUAN: I'll be glad to do that.

Please responded by November 19, 2003. We are holding the final printing of the transcript by the GPO for your response.

Thank you.

Emily

*Emily E. Sanders*

*U.S. House of Representatives*

*Committee on the Judiciary*

*Subcommittee on Immigration, Border Security, and Claims*

*(202) 225-5727*

